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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

# Decision

**Matter of:** Military Agency Services Pty., Ltd.

**File:** B-290414; B-290441; B-290468; B-290496

**Date:** August 1, 2002

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Chris Mangan for the protester.

Lis B. Young, Esq., Department of the Navy, for the agency.

Peter D. Verchinski and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

1. General Accounting Office (GAO) will not consider protests that awards under solicitations for services breach the protester's requirements contract because this is a contract administration matter and therefore outside GAO's bid protest jurisdiction.
2. Protest of solicitation requirement as unduly restrictive is denied, where the requirement relates to safety and reliability, and the protester has not shown the requirement is unreasonable or unachievable.
3. Agency's request for near-immediate responses to requests for quotations for picket boat services conducted under simplified acquisition procedures is unobjectionable, where the requirements were needed shortly after when responses were due, the contracting office was only requisitioned to obtain the requirements shortly before requesting quotes, only prices were solicited, and all requested sources timely submitted quotes.
4. Defense agency was not required to comply with the public notice requirements contained in Federal Acquisition Regulation part 5 where the acquisitions were for services performed outside the United States and only local sources were solicited.
5. Where no evaluation factors are specified in a request for quotations, which only requests prices, price is the sole evaluation factor.
6. Even assuming agency improperly failed to solicit the protester under a request for quotations (RFQ) issued under simplified acquisition procedures for picket boat

services, the protester was not prejudiced where under the particular circumstances there was no suggestion that it would have been successful under the RFQ.

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## **DECISION**

Military Agency Services Pty. Ltd. (MAS) protests the award of four separate orders by the Naval Regional Contracting Center Singapore (NRCCSG) to Parsh Marine Company under blanket purchase agreement (BPA) No. N68047-95-A-0019, for picket boat services in the Singapore harbor to protect the United States Naval Ship (USNS) Niagara Falls, the United States Ship (USS) Cushing, the USNS Pecos, and the USNS John Ericsson.<sup>1</sup>

We deny the protests in part and dismiss them in part.

To acquire the picket boat services, NRCCSG issued four requests for quotations (RFQ) between April 19 and 29, 2002, under the simplified acquisition procedures set forth in Federal Acquisition Regulation (FAR) part 13. Each RFQ contemplated the award of a fixed-price order on a per-day basis for a specified ship. Previously, on December 13, 2001, NRCCSG awarded MAS an indefinite-delivery, requirements contract No. N68047-02-D0022, for ship husbanding services, which included provisions for picket boat services. Parsh has been performing a variety of services, including picket boat services, for the Navy through orders placed under the BPA, which was executed in 1995.

The first RFQ, for picket boat services for the USNS Niagara Falls, was issued on Friday, April 19. Three vendors, including MAS, responded with quotes before closing on Monday morning, April 22. At approximately the same time (and before closing), MAS also submitted a protest to NRCCSG, alleging that the solicitation breached its requirements contract and that the picket boat requirements in the RFQ exceeded the government's legitimate needs. MAS's quoted price was 1,300 Singapore dollars (S\$) per day, the same price as in its requirements contract.<sup>2</sup> On that same date, the agency awarded an order for the 3 days of services to Parsh, which had submitted the low quote of S\$1,000 per day. Performance began later that day. MAS protested the RFQ and the award to our Office on May 1.

With regard to the second RFQ, for picket boat services for the USS Cushing from April 25 until May 15, the contracting officer called three vendors, including MAS and Parsh, between 4:00 and 4:10 p.m. on April 24, and requested that oral quotes be

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<sup>1</sup> Picket boats are to protect the ship from all waterborne threats by screening all incoming waterborne craft prior to arrival alongside a ship, verbally directing all unauthorized watercraft away from the vessel, and warning the ship of any unauthorized watercraft that continue to head toward the ship. Agency Report at 2.

<sup>2</sup> The record reflects an exchange rate of U.S.\$1.00=S\$1.62.

submitted by 4:35 p.m. MAS again offered the picket boat services at its requirements contract price, S\$1,300 per boat per day, while Parsh submitted the low quote of S\$1,000 per boat per day. Award for two boats was made that same day to Parsh. Later that day, but after closing, MAS filed an agency-level protest, again claiming that its requirements contract had been breached, and also asserting that the RFQ's request for an immediate response did not give MAS a meaningful opportunity to compete. MAS subsequently protested this RFQ and award to our Office on May 6.

Under the third RFQ, according to the agency, the contracting officer called MAS, Parsh and another potential source on the morning of April 25, requesting quotes be submitted for picket boat services for the USNS Pecos to be performed between April 27 and May 1. The agency states that it gave the vendors 24 hours to respond, and that all three responded early on April 25. MAS states that it was requested to respond "immediately," and the record shows that it submitted its quote within 5 minutes of the request.<sup>3</sup> MAS again responded with a quote of S\$1,300 per day and Parsh again quoted the low price of S\$1,000 per day. MAS states it learned it was not selected on April 29, when it observed Parsh performing picket boat services. MAS filed a protest of the RFQ and award with our Office on May 9.

Quotes under the fourth RFQ for picket boat services for the USNS John Ericsson from May 1 through June 6 were verbally requested from three sources on April 26. MAS was not solicited. Parsh was solicited and again submitted the low quote of S\$1,000 per day. MAS states that it first learned about the requirement when on May 2 it noticed the USNS John Ericsson in port, and immediately sought out the NRCCSG contracting officer, and asked who was providing picket boats and why MAS was not contacted for a quote. The Navy indicated that it intentionally did not solicit MAS for the services. MAS protested this RFQ and award to our Office on May 9.

The primary contention in MAS's protests is that the awards under these RFQs breach MAS's requirements contract, which assertedly contemplates that these services would be provided by MAS. The Navy responds that these services were not required to be ordered under that contract. Resolving this issue would require interpreting MAS's existing contract and determining whether the Navy's actions constituted a contract breach, which are matters of contract administration. Under the Competition in Contracting Act of 1984, our jurisdiction to resolve bid protests

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<sup>3</sup> As pointed out by MAS, some file documentation suggests that this order was actually placed with Parsh on April 24. The Navy asserts that this was a clerical mistake and the request for quotations was not issued and the responses received until April 25. While MAS states that this discrepancy demonstrates that it had no chance in the competition, we find that MAS was not prejudiced, even if we assume, arguendo, that the order was placed on April 24, because Parsh quoted a lower price.

extends to resolving disputes concerning the alleged violation of procurement laws and regulations in connection with the award of contracts by federal agencies. 31 U.S.C. §§ 3551-3552 (2000). In exercising this authority (with exceptions not relevant here), we do not review matters of contract administration, which are within the discretion of the contracting agency and are, under the Contract Disputes Act of 1978, for review by a cognizant board of contract appeals or the Court of Federal Claims. 4 C.F.R. § 21.5(a) (2002); Hawker Eternacell, Inc., B-283586, Nov. 23, 1999, 99-2 CPD ¶ 96 at 3. Thus, we will not review the parties' dispute concerning whether these services were required to be ordered under MAS's requirements contract.

The protester also alleges, with regard to the USNS Niagara Falls, that the picket boat requirements included in the RFQ exceeded the agency's legitimate needs and unduly restricted competition. However, other than this general assertion, the protester offers only one specific example: the requirement that the picket boat be "free . . . of exposed wires and connections," with which MAS expresses "doubt [that] any boat afloat can comply."<sup>4</sup> Agency-Level Protest of USNS Niagara Falls RFQ at 3-4.

Where a protester challenges a specification as unduly restrictive of competition, we will review the record to determine whether the restriction is reasonably related to the agency's needs. LBM Inc., B-286271, Dec. 1, 2000, 2000 CPD ¶ 194 at 3. Provided that there is a reasonable basis for the agency's determination of its actual needs, we will not question the agency's requirements. Moreover, when a requirement relates

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<sup>4</sup> We will not consider the protester's general assertion that the specifications are unduly restrictive. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of a protest. 4 C.F.R. § 21.1(c)(4), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(f). These requirements contemplate that protesters provide, at a minimum, either allegations or evidence that the protester will prevail in its claim of improper agency action, which is not satisfied by the protester's general assertion that the specifications are overly restrictive. Blackhorse Servs. Co., B-244545, July 5, 1991, 91-2 CPD ¶ 30; Robert Wall Edge-Recon., B-234469.2, Mar. 30, 1989, 89-1 CPD ¶ 335. As indicated, the only specific contention raised in the agency-level protest, which was incorporated by reference in MAS's protest to our Office, concerned the exposed wire specification. While the protester did take exception to other aspects of the RFQ in its quote, they were neither protested in MAS's agency-level protest nor in its protest to our Office. Thus, the agency reasonably did not respond to these other aspects. To the extent that MAS protests these specific matters in its comments on the agency report, these contentions are untimely raised and not for consideration, since a protester may not delay and present issues piecemeal when it was aware of those grounds at the time of initial filing. Digital Sys. Group, Inc., B-257721, B-257721.2, Nov. 2, 1994, 94-2 CPD ¶ 171 at 3-4.

to human safety, the agency has the discretion to define solicitation requirements to achieve not just reasonable results, but the highest possible reliability and effectiveness. Greenwich Air Servs., Inc., B-277656, Nov. 5, 1997, 97-2 CPD ¶ 159 at 3. The protested requirement is clearly related to the safety and reliability of the craft. While the protester notes that this requirement is not included in its requirements contract, it is well established that each procurement stands on its own, and the requirements of one contract for services do not invalidate otherwise reasonable requirements in another contract for the same services. See T&S Prods., Inc., B-272291, Sept. 13, 1996, 96-2 CPD ¶ 117 at 2. In sum, notwithstanding the protester's general assertion that no boat can meet this requirement, it has not shown the requirement is unreasonable or unachievable.<sup>5</sup>

MAS also asserts that the agency's request for a near-immediate response to the RFQs for the USS Cushing and the USNS Pecos did not provide MAS with a meaningful opportunity to compete. MAS claims that the agency should have known earlier when the services would be required, and that if MAS had had more time to respond it would have tried to get a lower price from its subcontractor.<sup>6</sup>

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<sup>5</sup> The protester further alleges that the awardee's picket boat did not comply with the RFQ's restrictive requirements. MAS does not offer any evidence to support this bare assertion, conceding, in its comments on the agency report, that it cannot gain access to its competitor's boat to substantiate this allegation. Moreover, whether the contractor will in fact comply with these requirements is a matter of contract administration that is the responsibility of the contracting agency, and is not for consideration by our Office. Alpha Tech. Servs., Inc., B-250878, B-250878.2, Feb. 4, 1993, 93-1 CPD ¶ 104 at 4.

<sup>6</sup> The Navy alleges MAS's protests of the RFQs for the USS Cushing and the USNS Pecos were untimely filed after the time set for receipt of quotations under the respective RFQs. 4 C.F.R. § 21.2(a)(1). However, when a protester does not have a reasonable opportunity to file its protest before the time set for receipt of proposals, we will apply the rule at 4 C.F.R. § 21.2(a)(2), which allows a protester 10 days to file a bid protest from the date when it knew or should have known there was a basis to protest. Diagnetics, Inc., B-261712, Sept. 28, 1995, 95-2 CPD ¶ 165 at 3 n.3. Here, we do not think it is reasonable to require MAS to have protested within the very limited time it first learned of the solicitation and the time set for receipt of quotes. Consequently, we consider these protests to be timely.

The Navy also argues that MAS's protest of the USNS Pecos RFQ is untimely, even applying the 10-day timeliness rule, since that ship arrived in port on April 27, MAS states that it "soon observed" another contractor providing picket boat services, and MAS filed its protest at our Office only on May 9, more than 10 days later. However, MAS specifically states that it first observed the USS Pecos in port soon after April 29, when it thought that ship was going to arrive, and not April 27 as the Navy  
(continued...)

FAR § 13.003(h)(2) requires that for acquisitions conducted under simplified acquisition procedures the agency establish deadlines for the submission of responses that afford quoters a reasonable opportunity to respond. The NRCCSG states that it solicited these services within 24 hours of when it was provided a requisition for the services by the requesting Navy office. NRCCSG explains that the requests to NRCCSG for such services are often made shortly before ships arrive because ships sometimes change their plans and arrive at dates and times different than expected or not at all. NRCCSG states that its policy is to give vendors 24 hours to respond to such requirements if possible. While it appears that NRCCSG was at least generally aware at some earlier time that these ships were coming to Singapore harbor and that picket boat services would be required, the agency explains that the specific movements of ships are generally classified confidential until declassified and the specific requests for services are made to NRCCSG. Under the circumstances here, we cannot say that the time given vendors to respond to these RFQs was unreasonable or insufficient, given that only prices were requested, all solicited vendors (including MAS) timely responded, and the services were required soon after NRCCSG was actually requisitioned for the needs.<sup>7</sup>

The protester also argues that the Navy did not comply with the public notice requirements before soliciting quotes for the USS Cushing and the USNS John Ericsson. FAR §§ 5.101, 5.201 and 5.203 contain detailed synopsis and posting requirements that are generally applicable to all procurements, including those subject to the simplified acquisition procedures. FAR § 5.202 lists the exceptions to these requirements. These RFQs fall under the exception contained at FAR § 5.202(a)(12) for defense agency contract actions made and performed outside of the United States when only local sources are solicited. MAS nevertheless argues that the introductory clause of FAR § 5.202 specifically limits the exceptions to the public notice requirements of FAR § 5.201, which leaves unaffected the separate notice requirements found in FAR § 5.101, which MAS argues should be applied

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asserts. This is consistent with MAS's quote, which notes the services were to start on April 29. On the record, we consider MAS's protest of this RFQ to be timely filed.

<sup>7</sup> As noted, there is a dispute between the parties as to how much time was given the vendors to respond to the RFQ for the picket boat services for the USNS Pecos, with the protester asserting that it was told to respond immediately and the agency asserting that it gave the vendors 24 hours. While MAS generally asserts that it could have obtained lower prices from its subcontractors if it had been given a "reasonable" time to respond, it does not indicate that it could have accomplished this within 24 hours. In any case, as discussed below (at note 10), the record does not indicate that MAS would have submitted a lower quote during the timeframe of these RFQs. Thus, we cannot find MAS was prejudiced, even if it was required to respond immediately to the request for quotations.

here.<sup>8</sup> However, FAR § 13.105, which governs the synopsis and posting requirements applicable to simplified acquisition procedures, states that the public display requirements of FAR §§ 5.101 and 5.203 are not applicable if an exception in FAR § 5.202 applies. Thus, the FAR §§ 5.101, 5.201 and 5.203 requirements are not applicable to these RFQs.

MAS also argues that the actual evaluations under the USS Cushing and the USNS Pecos RFQs were inconsistent with factors established by the oral solicitation. MAS explains that it was not advised of any specific evaluation criteria for the RFQs, and the Navy did not, as it should have done, compare MAS's picket boat with Parsh's boats to determine whether the competitor's boats met the same specifications that MAS was required to meet under its requirements contract or to determine which quote represented the best value. However, where, as here, price is the only term requested by a solicitation and no evaluation criteria are specified, price is necessarily the sole evaluation criterion. United Marine Int'l LLC, B-281512, Feb. 22, 1999, 99-1 CPD ¶ 44 at 4. In any case, MAS has not shown that Parsh's boats are not comparable to MAS's or would not meet the same technical requirements contained in MAS's contract.<sup>9</sup>

MAS also alleges that the contracting officer improperly failed to solicit MAS under the RFQ for the USNS John Ericsson. In using simplified acquisition procedures, agencies are required to "promote competition to the maximum extent practicable." 10 U.S.C. § 2302(g)(3); 41 U.S.C. § 427(c); FAR § 13.104. FAR § 13.104(a) expressly prohibits the solicitation of "quotations based on personal preference" under simplified acquisition procedures. Where, as here, a simplified acquisition is excepted by FAR § 5.202 from the synopsis requirements, the contracting officer is required to:

consider solicitation of at least three sources to promote competition to the maximum extent practicable. Whenever practicable, request quotations or offers from two sources not included in the previous solicitation.

FAR 13.104(b). We have recognized that while the solicitation of three vendors may be sufficient to satisfy the statutory requirement to promote competition to maximum extent practicable where there is no synopsis requirement, see SF & Wellness, B-272313, Sept. 23, 1996, 96-2 CPD ¶ 122 at 2; Omni Elevator Co., B-246393, Mar. 6, 1992, 92-1 CPD ¶ 264 at 2, an agency may not, consistent with this

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<sup>8</sup> The introductory clause states, "The contracting officer need not submit the notice required by 5.201 when— . . ." FAR § 5.202.

<sup>9</sup> As noted, MAS concedes that it cannot support its allegations regarding the characteristics of its competitor's boats because it cannot gain access to them.

requirement, deliberately fail to solicit a responsible source which expressed interest in competing . Bosco Contracting, Inc., B-270366, Mar. 4, 1996, 96-1 CPD ¶ 140 at 3; Kahn Indus., Inc.; Midwest Dynamometer & Eng'g Co., B-251777, B-251777.2, May 3, 1993, 93-1 CPD ¶ 356 at 4-5.

Here, we need not decide whether the agency's failure to solicit MAS was improper because there is no evidence that MAS was prejudiced by this failure under the particular circumstances of this case. Prejudice is an element of every viable protest. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F3d 1377 (Fed. Cir. 1996). Here, the record evidences that if MAS had been solicited, it is unlikely that it would have submitted the lowest quote. Indeed, MAS does not allege, and the record does not suggest, that MAS would have quoted a lower price for this RFQ if it had been solicited. We note in this regard that this RFQ was conducted within the same timeframe as the other three RFQs, on which Parsh quoted S\$1,000 per day (as it did for this RFQ) and MAS S\$1,300 per day.<sup>10</sup> Thus, the protester has not shown that it had a substantial chance for award if it had been solicited, and was thus not prejudiced.

The protester also claims the agency violated FAR § 33.103(f)(1) by not staying performance of the contract for the USNS Niagara Falls when MAS filed its agency-level protest. However, any failure by the Navy to follow the regulations in making an award while the agency-level protest was pending does not affect the validity of the award and does not provide a basis for us to sustain the protest. Associated Corp., B-225562, Apr. 24, 1987, 87-1 CPD ¶ 436 at 3. This is merely a procedural defect, and thus we dismiss this protest ground. See Carolina Waste Sys., B-215689.3, Jan. 7, 1985, 85-1 CPD ¶ 22 at 3.

MAS finally maintains that its protests involving the USNS Niagara Falls and the USS Cushing should be sustained because the agency's report on those protests was untimely filed with our Office. Pursuant to 4 C.F.R. § 21.3(f), the Navy requested leave to submit a consolidated report on all four protests by June 7, a week after the report on the protest was initially due and a day before the reports were due on the final two protests. Our Office granted this request on May 16 and the report was

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<sup>10</sup> In a July 24 submission, MAS provided for the first time evidence that it has subsequently submitted lower quotes for picket boat services. (MAS produced no such evidence in its multiple earlier submissions.) However, the record indicates that, during the timeframe of these RFQs, MAS was quoting its requirements contract price and asserting that the agency was required to order these services under that contract. Thus, the record does not suggest that MAS would have submitted a lower quote on this RFQ if it had been solicited.

submitted on June 7. In any case, this protest ground also relates to an alleged procedural defect that would not be prejudicial to MAS, and thus provides no basis to sustain the protest.<sup>11</sup> See Land Mark Realty, Inc., B-224323, Dec. 1, 1986, 86-2 CPD ¶ 620 at 2.

The protests are denied in part and dismissed in part.

Anthony H. Gamboa  
General Counsel

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<sup>11</sup> To the extent that MAS raises new protest bases in its July 24 filing, these grounds are untimely filed, since a protester may not delay and present issues piecemeal when it was aware or should have been aware of those grounds at the time of initial filing or when it received the agency report. Digital Sys. Group, Inc., B-257721, B-257721.2, Nov. 2, 1994, 94-2 CPD ¶ 171 at 3-4.