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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Servrite International, Ltd.

File: B-236606

Date: December 6, 1989

DIGEST

Agency properly restricted competition to two offerors where it reasonably believed those offerors were the only ones who could perform the work promptly and properly in view of an unusual and compelling urgency for fresh water at an island military installation.

DECISION

Servrite International, Ltd. protests any award of a contract under request for proposals (RFP) No. N62470-89-R-8117, issued by the Naval Facilities Engineering Command, to provide water services through contractor installed and maintained reverse osmosis units at the Naval Station, Quantanamo Bay, Cuba. The competition was limited to two offerors based on the Navy's determination of an unusual and compelling urgency for the water services and that only those offerors were capable of meeting the Navy's needs without undue delay. Servrite contends that it was improperly excluded from the competition even though it is able to meet the Navy's requirements.

We deny the protest.

The Navy's determination of an urgent need is based on an inadequate supply of fresh water at Quantanamo Bay. The Naval Station normally uses 1.2 million gallons of fresh water daily, previously furnished by four seawater desalination units. Three of the four units have become inoperable and irreparable and a separate construction contract, awarded to replace these units, will not be completed for at least 2 years. In the meantime, the remaining unit is able only to produce 850,000 gallons per day, 100,000 gallons above its design capacity. The remaining requirement is currently being met through strict water rationing, barging of water, and two Army reverse osmosis units. The Navy states that these measures are insufficient on a long term basis due to the strain on the remaining unit, the expense

and limited quantity of barged water, and the unreliability of the Army units.

This RFP calls for a contractor designed, built, owned, operated, and maintained seawater reverse osmosis plant capable of producing 500,000 gallons of water per day, with ownership of the equipment transferred to the Navy at the end of the contract. The winning contractor would have 6 months to install the equipment and begin selling water to the Navy.

In preparation for the instant procurement, the Navy conducted a market survey of potential offerors who were identified by its consultant. The protester was included in the survey through its manufacturer, Reliable Water Co., Inc. The survey revealed that Aqua Design, Inc. and Hydranautics manufactured and operated water supply systems currently selling, respectively, 265,000 and 576,000 gallons of water per day. It also revealed that Reliable was operating a 60,000 gallon unit and had a contract to install three 350,000 gallon units.

Servrite, a small business distributor of Reliable's products, as well as Aqua Design and Hydranautics, expressed an interest in submitting proposals. However, pursuant to the Navy's finding of unusual and compelling urgency, (see Federal Acquisition Regulation (FAR) § 6.302-2 (FAC 84-38)) for a reliable and dependable source of water, it determined to restrict the competition to only those offerors currently selling water from a 250,000 gallon per day or larger plant: Aqua Design and Hydranautics.

When Servrite discovered, after the closing date, that it had been excluded from the competition, it filed its protest with our Office. Subsequent to that filing, the Navy notified our Office of its determination to award the contract to Aqua Design because urgent and compelling circumstances significantly affecting the government's interests would not permit waiting for our decision.

Under the Competition in Contracting Act of 1984 (CICA), an agency may use noncompetitive procedures to procure goods or services where the agency's needs are of such an unusual and compelling urgency that the government would be seriously injured if the agency is not permitted to limit the number of sources from which it solicits bids or proposals. 10 U.S.C. § 2304(c)(2) (1988); FAR § 6.302-2(a)(2). This

authority is limited by the CICA provisions at 10 U.S.C. § 2304(e), which require agencies to request offerors from as many sources as practicable. See FAR § 6.302-2(c)(2). An agency using the urgency exception may restrict competition to the firms it reasonably believes can perform the work promptly and properly, see Industrial Refrigeration Serv. Corp., B-220091, Jan. 22, 1986, 86-1 CPD ¶ 67, and we will object to the agency's determination only where the decision lacks a reasonable basis. See Colbar, Inc., B-230754, June 13, 1988, 88-1 CPD ¶ 562. In this regard, we have recognized that a military agency's assertion that there is a critical need which impacts military operations carries considerable weight. Honeycomb Co. of America, B-225685, June 8, 1987, 87-1 CPD ¶ 579.

The protester does not argue that the fresh water requirement at Guantanamo Bay does not constitute an "unusual and compelling urgency," allowing the use of limited competition. Indeed, the current solutions are expensive and fall short of meeting the Navy's requirements. Further, according to the Navy, without sufficient quantities of fresh water, it would be forced to evacuate the installation, resulting in the expenditure of millions of dollars in associated costs and the failure of the base's mission.

Servrite, however, contends that it should have been included in the competition since the Navy's consultant recommended it ^{1/} and since it could have submitted a compliant offer. The Navy maintains that it reasonably determined that only two offerors were capable of meeting its requirements without undue delay.

In particular, the Navy explains that in view of the critical need for water, the 6 month lead time for installation of the equipment, and the plant's remote location on a communist-governed island, it determined that it could afford only to solicit firms with a known capability to manufacture, install, and operate the required 500,000 gallon system within the required time. The Navy considered Reliable and Servrite's current operation of far smaller units (60,000 gallons per day) and Servrite's contract to provide three, 350,000 gallon units, as yet not completed, and rejected these firms as potential offerors because neither had shown a current, demonstrated ability to manufacture, deliver, install, operate, maintain, and sell

^{1/} Since the consultant provided a list of manufacturers "that could possibly" meet the requirement, we do not believe that inclusion of Servrite's manufacturer establishes any presumption of its capability.

water from units meeting the Navy's large scale need. Further, although Servrite points to Reliable's prior experience, and makes the bare assertion that it would be capable of timely meeting the requirement, it has not submitted any evidence of that capability. Thus, we agree that the Navy reasonably determined to limit the competition to Aqua Design and Hydranautics.

Servrite also contends that its units would save the Navy money on energy consumption. While the cost of government supplied electricity does play a part in offered prices, the Navy notes that a specific energy consumption level is not a minimum requirement. Further, since we agree that the Navy reasonably excluded Servrite for its undemonstrated capability to meet the requirement, we do not find Servrite's claimed energy savings to be relevant.

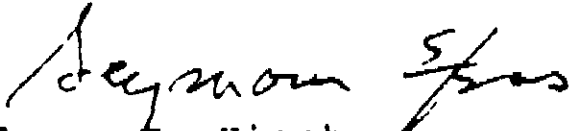
Servrite also complains that the solicitation was not advertised in the Commerce Business Daily (CBD). However where, as here, an agency conducts a procurement under the unusual and compelling urgency conditions of FAR § 5.302-2, and the agency has determined it would be seriously injured by complying with the CBD notice requirement, the agency need not provide that notice. FAR § 5.202(a)(2) (FAC 84-38).

We do note that the Navy failed to comply with its statutory duty to provide solicitations to small businesses that request them. 15 U.S.C. § 637(b) (1988). However, we do not find that Servrite was prejudiced since we find that it was properly excluded from the competition and thus the failure to provide a copy of the RFP was a procedural defect not affecting the validity of the procurement. See Honeycomb Co. of America, B-225685, supra.

Finally, Servrite alleges that Aqua Design is a Japanese financed concern. The Navy explains that all applicable procurement provisions requiring domestic end products and services will be enforced. Further, Aqua Design explains that while it has furnished and is operating a number of plants under subcontracts to a Japanese firm, that firm has no financial interest in Aqua Design. Accordingly, we find

the protester's speculative allegations to be without merit.
See Independent Metal Strap Co., Inc., B-231756, Sept. 21,
1988, 88-2 CPD ¶ 275.

The protest is denied.

for 
James F. Hinchman
General Counsel