



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Braswell Services Group, Inc.

**File:** B-278521

**Date:** February 9, 1998

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William A. Scott, Esq., Pedersen & Scott, for the protester.

Sharon Hershkowitz, Esq., Naval Sea Systems Command, for the agency.

Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Protest that solicitation for ship repair services is defective for failing to specify the location of required work and interferences that must be moved in order to perform the work, and that offers therefore cannot be prepared intelligently and on an equal basis, is denied where (1) nature of emergent repairs and variable nature of shipboard conditions make it impossible to specify location of repairs in advance; (2) agency provided offerors with ship plans, drawings, manuals, and provided 1-1/2 months for a shipboard inspection; and (3) alternative of structuring contract to include "pool" of hours to cover unanticipated work which may be necessary to perform the required work would shift all risk of increased cost during contract performance to agency; agency is permitted, instead, to structure solicitation to require offerors to develop prices taking contingencies into account.

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## **DECISION**

Braswell Services Group, Inc. protests the terms of Department of the Navy's request for proposals (RFP) No. N62670-97-R-0007, for ship repair work of an emergent, time-critical nature on FFG-7 (frigate) class vessels homeported at the Mayport Naval Station in Jacksonville, Florida.

We deny the protest.

The RFP contemplates the award of a fixed-price, indefinite delivery, indefinite quantity (IDIQ) contract for a base year, with four 1-year options, to the responsive, responsible offeror with the lowest evaluated price for the base and option years. The RFP's pricing schedule contains numerous contract line item numbers (CLIN) and subline item numbers (subCLIN) that require submission of unit and extended prices. An enclosure to the RFP set forth the exact work required under each

subCLIN and stated that the location and quantity of the work would be identified after award, as per delivery order. The schedule provides further as follows:

The determination of the type, nature, and extent of any interference<sup>1</sup> removal required to be accomplished in order to complete work required by each individual CLIN or SUBCLIN, shall be the responsibility of the contractor. Accordingly, the contractor shall price any anticipated interference removal/reinstallation costs in CLIN pricing.

Braswell protested to the agency 2 days prior to the closing date, arguing that the RFP is defective because it fails to identify the amount and shipboard location of required work under six CLINs.<sup>2</sup> The agency proceeded with the closing. Four proposals were received, with prices for the base year ranging from \$2,998,190 to \$9,183,268. Braswell submitted a proposal without pricing the anticipated removal and reinstallation costs of the interferences in the CLIN pricing. The agency subsequently denied Braswell's agency-level protest, and Braswell then filed this protest with our Office.

Braswell argues that, without more information as to the location of the work under the six CLINs (which comprise more than 35 percent of the required work), offerors will be unable to determine what interferences will be involved in repairs, and thus will not be able to prepare their prices intelligently and on an equal basis. In this regard, it is undisputed in the record that the cost of certain otherwise relatively inexpensive repairs may become very expensive depending on the interferences and the exact location on the ship. For example, work located in areas that are difficult to reach--behind a bulkhead, in a tank, in the bilge, or under the main engine--is more expensive than work located in open spaces. Braswell asserts that the RFP, by leaving offerors to develop average prices covering all eventualities, exposes the contractor to unwarranted risk, and will result in inflated prices for all of the work. Braswell maintains that this unacceptable level of risk is reflected in the wide disparity in base year prices received (from \$2,998,190 to \$9,183,268). Braswell suggests that the Navy eliminate the problem by listing the removal and reinstallation of interferences as a separate RFP work item and including an additional government requirement (AGR) clause, which would allow the agency to

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<sup>1</sup>Standard Item No. 009-23 (incorporated by reference in the RFP) defined an interference as "any part of a ship, whether installed or portable, that must be moved or disturbed in the accomplishment of work specified in the Job Order."

<sup>2</sup>The CLINs at issue cover tank plating repairs, tank weld joint repairs, bulkhead and deck penetration replacement, and ferrous and non-ferrous piping replacement.

pay the contractor separately for removal of interferences, in addition to its proposed fixed price for a repair.<sup>3</sup>

The Navy responds that the variable nature of shipboard conditions associated with emergent repairs makes the location of repair or replacement work for these CLINs impossible to establish in the RFP; needed pipe repairs, for example, could occur anywhere on the ship where pipes are located. The Navy maintains that the resulting contractor risk is mitigated to the extent possible by the information made available to offerors in the RFP and the opportunity for an extended ship inspection prior to the closing time. It is the Navy's position that the remaining risk can be factored into offerors' prices based on offerors' experience and business judgment.

A procuring agency must provide sufficient information in a solicitation to enable offerors to compete intelligently and on a relatively equal basis. State Management Servs., Inc., B-251715, May 3, 1993, 93-1 CPD ¶ 355 at 5. However, there is no legal requirement that competition be based on plans and specifications which state the work in such detail as to completely eliminate all risk or remove uncertainty from the mind of every prospective offeror. Braswell Servs. Group, Inc., supra, at 2-3. It is within an agency's discretion to solicit a proposed contract imposing maximum risk upon the contractor and minimum administrative burdens upon the agency. Jewett-Cameron Lumber Corp., et al., B-229582 et al., Mar. 15, 1988, 88-1 CPD ¶ 265 at 5.

The RFP meets this standard. While the protester is correct that the RFP imposes significant risk on the contractor by virtue of the need to formulate average prices for the CLINs in question, this fact alone does not render the RFP defective. The RFP advises offerors of the availability of ship and equipment plans, drawings, manuals, and provides a substantial amount of time for offerors to inspect the type

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<sup>3</sup>In its comments on the agency report, Braswell specifically asserts that the agency was required to include in the RFP historical information concerning the required work. This alleged RFP deficiency is untimely asserted, however, since Braswell did not raise it prior to the closing date. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1997); Braswell Servs. Group, Inc., B-276694, July 15, 1997, 97-2 CPD ¶ 18 at 6-7. Braswell also argues the RFP deviates from the policies and procedures in the Navy's operating manual. Those internal agency guidelines were not a part of the solicitation and do not have the force and effect of law. The alleged failure to comply with them therefore is a matter for consideration within the agency itself, rather than through the bid protest process. See Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114 at 8 n.7.

of vessel covered by the requirement (the agency reports that Braswell apparently did not avail itself of the inspection opportunity). In this regard, bids for service contracts, by their nature, often require the computation of prices based on visual inspection. Mark Dunning Indus., Inc., B-243757, Aug. 22, 1991, 91-2 CPD ¶ 187 at 3. There is no indication that the agency possesses any significant additional information that it has not made available.<sup>4</sup> Moreover, the risk to the contractor is mitigated to some extent by the exclusion (in standard item 009-23) of certain system components from the definition of interferences for which the contractor is responsible. We conclude that the available information and inspection opportunity provides offerors with sufficient information to prepare their offers intelligently, without undue risk, by using estimating techniques to develop average prices for the CLINs in question; that is, if a pipe repair will be significantly more expensive in one area than in another, offerors should factor these and other relevant considerations--including how much risk the offeror is willing to accept--into their item price. (We note that this solicitation approach is not uncommon where details surrounding a task are unpredictable and will be unknown prior to actual performance. See, e.g., id., at 3-4.)

Much of Braswell's protest is aimed at compelling the Navy to include an AGR clause in the RFP to alleviate offeror risk. The Navy has considered and rejected this approach because, while such a clause indeed would reduce or eliminate the contractor's risk under the CLINs in question, it would do so by shifting all risk to the government; instead of the contractor being required to perform a repair at a fixed price, the Navy essentially would pay the contractor its additional labor and material costs for removal and reinstallation of interferences. The Navy also notes that an AGR clause would entail a substantial administrative burden--the Navy would have to scope, negotiate, and write change orders for interferences on each recurring shipboard repair--and that when it used an AGR clause in prior ship repair contracts, prices for the additional work often greatly exceeded the government's estimates, since the clause encouraged contractors to "buy in" on the basic repair

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<sup>4</sup>For example, Braswell initially generally asserted that the agency previously has made available detailed design specifications for this type of requirement. However, the agency apparently has not developed such specifications for the CLINs in question. Moreover, given the unpredictable nature of the work under those CLINs, it is not clear (and Braswell does not explain) how design specifications would provide any more useful information to offerors than the information and shipboard inspection already provided for under the RFP.

work and later attempt to "get well" through change order pricing. See A&E Indus., Inc. et al., 66 Comp. Gen. 523, 525 (1987), 87-1 CPD ¶ 616 at 3-4.<sup>5</sup> The agency's concerns are reasonable, and requiring offerors to include pricing for interferences in their proposals, on a competitive basis, clearly alleviates these concerns. In any case, again, under the circumstances here, there simply is no requirement that an agency structure a solicitation to impose risk on the government instead of on the contractor. See Sunrise Int'l Group, Inc., B-261448, July 21, 1995, 95-2 CPD ¶ 43 at 4.<sup>6</sup>

The protest is denied.

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<sup>5</sup>In contrast, the Navy reports that a similar 1996 contract awarded under RFP No. N62670-95-R-0014 contained specifications virtually identical to those to which Braswell objects here, and that there have been no performance difficulties involving removal and reinstallation of interferences.

<sup>6</sup>Braswell asserts that the need to factor risk into the prices will result in higher repair prices. The Navy states that it is well aware of this possibility, and is willing to accept the risk of higher prices in light of the potential benefits of the approach relative to, for example, an approach using an AGR clause. There is nothing improper in the agency's decision to accept this risk. Braswell also cites the disparity in prices received as evidence that offerors could not compete on an equal basis under the RFP as written. However, where, as here, we have found no basis for objecting to a solicitation, a wide range of prices is not by itself conclusive evidence that proposals could not be prepared on an equal basis. See Tumpane Servs. Corp., 70 Comp. Gen. 406, 413 (1991), 91-1 CPD ¶ 369 at 8.