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**Comptroller General
of the United States**

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

Decision

Matter of: Bannum, Inc.

File: B-289707

Date: March 14, 2002

Nancy M. Camardo, Esq., Joseph A. Camardo Law Office, for the protester.
John J. LoCurto, Esq., and William D. Robinson, Esq., Federal Bureau of Prisons, for the agency.
Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that urgent need for halfway-house services was a result of lack of agency advance planning is denied where agency engaged in planning by attempting to procure the required services 18 months ago but plans were disrupted and failed to achieve the expected results.

DECISION

Bannum, Inc. protests the terms of request for proposals (RFP) No. 200-0732-MA (RFP 0732), issued by the Department of Justice, Federal Bureau of Prisons (BOP) for halfway-house services in Nashville, Tennessee. BOP conducted the procurement under the limited competition provision of Federal Acquisition Regulation (FAR) § 6.302-2 (unusual and compelling urgency). Bannum contends that the limited competition was improper because the agency's urgent and compelling need for these services was due to a lack of advance planning.

We deny the protest.

BOP initially solicited this requirement (for a 2-year base period with 3 option years) on a competitive basis, under RFP No. 200-0610-MA (RFP 0610), issued on August 1, 2000, with performance to start September 1, 2001. Agency Report (AR) at 2. Three offers were received and evaluated. Because negotiations were prolonged, the agency extended the contract of Keeton Corrections, Inc. (the incumbent); it thereafter made award to Keeton on November 15, with performance to begin March 1, 2002. Bannum and the other disappointed offeror, Dismas Charities, Inc., protested the award. In response, on December 7, 2001, the agency took corrective

action by canceling the solicitation and terminating Keeton's contract for convenience. We dismissed the two protests (B-289348 and B-289348.2) as academic on December 14.

On January 9, 2002, BOP finalized a written Justification and Approval (J & A) providing that, due to "unusual and compelling urgency," the agency intended to conduct a limited competition, among the three offerors that responded to RFP 0610, to obtain halfway-house services for a 1-year interim period. FAR § 6.302-2; AR, Tab D, J & A, at 1. The requirement was deemed urgent because the current contract was set to expire February 28. A 1-year contract period was considered necessary to provide the agency with sufficient time to prepare for and conduct a full and open competition to meet its long-term needs. *Id.* at 1-3. All three offerors submitted proposals by the January 18 due date. By letter of the same date, Bannum filed this protest with our Office.

Bannum maintains that, notwithstanding that it (as well as Dismas) has been included in the limited competition, due to the required March 1 start date, this is a de facto sole-source procurement; only Keeton, with its currently operating facility, can meet the RFP's preparatory start-up schedule and performance start date. Protester's Comments at 4, 7.¹ Bannum asserts that this short timeframe is attributable to the agency's failure to conduct adequate advance planning. Specifically, the protester contends that improper actions by the agency under the original procurement—including delaying award to allow Keeton to find an alternate site instead of making award to Bannum—and failing to promptly issue the new RFP after terminating Keeton's contract on December 7, created the urgency on which the J & A is based. *Id.* at 3-4. Asserting that the agency does not need a full year to conduct the procurement for its long-term needs in any case, Bannum concludes that the contract term under the RFP should be shortened to 6 months.

An agency may use other than competitive procedures where its needs are of such an unusual and compelling urgency that the government would be seriously injured if the agency did not limit the number of sources from which bids or proposals are solicited. 41 U.S.C. § 253(c)(2) (1994); FAR § 6.302-2(a)(2). A contract may not be awarded using other than competitive procedures, however, where the urgent need for the requirement has been brought about by a lack of advance planning by contracting officials. 41 U.S.C. § 253(f)(5)(A); see FXC Corp., B-257697.2, B-257973, Dec. 1, 1994, 94-2 CPD ¶ 216 at 10-11. We will review an agency's determination to use other than competitive procedures to determine whether it was reasonable. Abbott Prods., Inc., B-231131, Aug. 8, 1988, 88-2 CPD ¶ 119 at 6.

¹ While Bannum claims that only Keeton can realistically compete, both Bannum and Dismas (as well as Keeton) submitted proposals in response to the new RFP, and BOP has advised us, by letter of February 15, that it made award to Dismas on February 13.

The agency's actions here were reasonable. First, there is no evidence of a general lack of advance planning. As noted, the agency initiated this procurement 18 months ago, and anticipated acquiring the halfway-house services before the end of 2001. This planning was thwarted by delays in the evaluation, the filing of two protests, and the termination of the awarded contract due to irregularities in the procurement. Thus, while the agency's planning ultimately was unsuccessful, this was due to unanticipated events, not a lack of planning. See FXC Corp., supra.

Similarly, there is no evidence of a lack of planning leading to an unreasonable delay in issuing the new RFP. As noted, the agency terminated the contract under the initial solicitation on December 7, 2001, and issued the new RFP on January 7, 2002, approximately 4 weeks later. Although Bannum notes that only minor revisions were made to the RFP, the agency explains that time was needed to formulate and implement its new two-stage plan—an immediate interim procurement followed by a procurement to meet the agency's long-term needs in the Nashville area. AR at 6-7. We think the agency's activities were sufficient to justify the relatively small delay following termination of Keeton's contract; agencies must be accorded a reasonable amount of time to determine how best to proceed under circumstances such as those here. In any case, Bannum clearly was not prejudiced by the 1-month delay. Bannum states that it would require from 3 to 7 weeks to apply for and receive necessary permits from the city of Nashville; that renovations can begin only after all permits are received; and that renovations could take up to 4 months. Protester Comments, attach. 1, Affidavit of D. Lowry, at 1. Thus, by its own estimate of the time required to prepare for performance, Bannum could not have met the March 1 start-up date even if the new RFP had been issued immediately following the cancellation.²

We also find nothing objectionable in the 1-year term of the contract under the new RFP, which reflects the amount of time the agency claims it needs to conduct a procurement for its long-term halfway-house needs. The determination of the agency's needs and the best method of accommodating them is primarily within the agency's discretion and we will not question that determination unless it has no reasonable basis. Sea-Land Serv., Inc., B-278404.2, Feb. 9, 1998, 98-1 CPD ¶ 47 at 6; Innovative Refrigeration Concepts, B-272370, Sept. 30, 1996, 96-2 CPD ¶ 127 at 3.

² Bannum complains that permitting an award under the new RFP will allow the agency to avoid the consequences of its improper actions under the prior solicitation. However, there is no basis for penalizing an agency for procurement errors by subsequently preventing it from meeting its legitimate needs. Furthermore, BOP already has addressed any errors it made under the prior procurement, in the form of the termination of the awarded contract.

BOP explains that the 1-year timeframe is necessary based on its experience soliciting halfway-house contracts; it notes that the prior unsuccessful procurement required more than 1 year to complete. AR at 7-8. The agency refers us to BOP Acquisition Policy 7.102-70, Acquisition Lead Times, which provides minimum lead times, depending on the type and estimated value of the acquisition. Under these guidelines, an RFP for community corrections services exceeding the simplified acquisition threshold, as anticipated here, requires a minimum of 305 days. Agency Submission, Feb. 8, 2002, attach. 2, at 1. BOP also has furnished a breakdown of the projected major steps for its long-term procurement; the timeframe for the projected milestones is 345 days. The agency also lists four factors—including possible site changes and community opposition—that could prolong the procurement. The evidence presented is sufficient to support the agency's determination that a 1-year interim contract period was necessary.

The protest is denied.

Anthony H. Gamboa
General Counsel