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RELEASED

PROCUREMENT, LOGISTICS,
AND READINESS DIVISION

APRIL 27, 1983

B-211177

The Honorable Lawton Chiles
United States Senate



121400

The Honorable Don Fuqua
House of Representatives

Subject: The Navy's Award of a Contract for Appraisal
Services (GAO/PLRD-83-67)

In response to your requests, we reviewed the contract awarded by the Naval Facilities Engineering Command (NAVFAC), Southern Division, Charleston, South Carolina, for appraisal services by a professional forester. Our review confirmed that your constituent had requested and been refused an opportunity to submit a proposal as stated in his letter to you. The refusal was based on the fact that NAVFAC used a modified rotating bidders' list system to select contractors to be solicited and would not provide a solicitation to other than those originally solicited. Further, NAVFAC officials stated that your constituent had received an earlier contract for similar services, and NAVFAC's policy is to spread work among qualified appraisers.

To assess the procedures followed in the award of this contract, we examined documents in the contract file and discussed the contracting process with a representative of NAVFAC. We also reviewed sections of the NAVFAC real estate manual. We used the Defense Acquisition Regulation (DAR) and previously issued Comptroller General decisions to evaluate the information obtained. We made the review in accordance with generally accepted government audit standards.

The Comptroller General has ruled in three decisions (B-182858 of Apr. 22, 1975; B-186425 of July 26, 1976; and B-198360 of Dec. 9, 1980) that using rotating lists of potential bidders is proper if the agency strictly adheres to the requirement of placing a synopsis of all (with certain exceptions) proposed procurements over \$10,000 in the Commerce Business Daily (CBD). The CBD provides potential offerors or bidders an opportunity to learn of proposed procurements and request copies of the solicitations. These decisions also held that "procuring agencies * * * must provide a copy of the solicitation to potential offerors, upon request, and procuring agencies must consider proposals submitted by all offerors on the prequalified lists."

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Your constituent is on NAVFAC's qualified appraisers list and had, in fact, performed satisfactorily on an earlier contract for similar services. Your constituent, therefore, should not have been denied the solicitation or consideration of his proposal if he chose to submit one.

Also NAVFAC did not publish the proposed procurement in the CBD, though required by the DAR. The DAR requires that most proposed procurements be synopsisized but provides for a number of exceptions. One of these is for personal and professional services. Appraisal services are included in this category and are subject to this exception. The DAR also provides, however, that notwithstanding the exception, contracting officers should synopsisize proposed contracts for personal and professional services when it is feasible and practicable to do so and when it is in the best interest of the Government. We are of the opinion that in this instance it was feasible and practicable to synopsisize the contract.

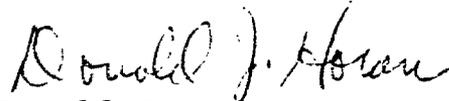
In a draft of this report, we suggested that NAVFAC:

1. Place synopses, when appropriate, of all procurements over \$10,000 in the CBD.
2. Provide, upon request, solicitations of proposed procurements to qualified offerors.
3. Consider proposals from unsolicited proposers as well as those solicited.
4. Revise its real estate manual so the procedures are in compliance with the DAR.

In summary, the Departments of Defense (DOD) and the Navy concurred with our suggestions and indicated action has been taken to insure the NAVFAC real estate manual is revised. (See pp. 8 and 9 of enc. I.)

In regard to the specific concern of your constituent, the chief appraiser of NAVFAC, by letter of March 9, 1983, directed that a policy change be made so unsolicited proposals are considered in the selection process. The chief appraiser also stated appropriate changes will be made in the NAVFAC manual. Your constituent, therefore, should not experience future difficulties in obtaining solicitations for proposed contracts and consideration if he submits a proposal.

As arranged with your Offices, unless you publicly announce its contents earlier, we plan no further distribution until 10 days from the date of this report. At that time, we will send copies to the Secretaries of Defense and the Navy and make copies available to others upon request. Please let us know if we can be of further assistance.



Donald J. Horan
Director

Enclosure

DOD RESPONSE TO GAO DRAFT LETTER REPORT NO. 6188

FINDINGS

FINDING A: A contractor had requested and been refused the opportunity by the Naval Facilities Engineering Command (NAVFAC) to submit a proposal on a contract awarded. The contractor was on the qualified contractor list and had performed satisfactorily on other contracts for similar services. Further, there was no legal basis to deny the constituent a copy of the solicitation or consideration of his proposal if he chose to submit one. (p.1, Draft Report).

COMMENT: DOD concurs. The Southern Division, Naval Facilities Engineering Command (SOUTHNAVFACENGCOM) determined that the procurement of the timber inventory services at issue constituted the procurement of a type of appraisal services. As such, SOUTHNAVFACENGCOM followed the procedures contained in Section 16 of the Navy Real Estate Manual for the procurement of appraisal services. In accordance with those procedures they solicited five registered foresters from their roster of qualified appraisers for a timber inventory contract. Performance of the contract consisted of on-site visits and the preparation of a report as to the species, size, class and volume of timber. The information received from the contractor was planned for use by SOUTHNAVFACENGCOM in making long range plans for Navy management of timber resources at the Naval Air Stations at Cecil Field and Jacksonville, Florida. The complaining contractor was on the roster of qualified foresters and had

performed satisfactorily on an earlier contract for similar services at one of these facilities. He was not solicited for this proposal in accordance with the procedures contained in Section 16 for the selection of appraisers from the roster of qualified appraisers. The complaining contractor was refused an opportunity to submit a proposal because he had received the preceding forest inventory contract for one of these sites and it is established policy to spread work among the qualified appraisers in order to maximize competition among qualified professionals. As explained below, the Navy acknowledges that it was an error to characterize this contract as an appraisal contract. Thus, the complaining contractor should have been solicited and his proposal should have been fully evaluated and considered.

FINDING B: The NAVFAC is not complying with the requirements of publishing proposed procurements in the Commerce Business Daily (CBD). The Public Law and the intent of Congress is that prospective procurements over \$10,000 are to be synopsisized and placed in the CBD. The few exceptions for not publicizing proposed procurements in the CBD were not applicable to this procurement. (p.2, Draft Report).

COMMENT: DOD partially concurs. This is a procurement of professional services. Personal and professional service contracts are excepted from the statutory requirement to synopsisize procurements over \$10,000 by 15 U.S.C. § 637(e)(7). Section 1-1003.1(c)(vii) of the Defense Acquisition Regulation (DAR) provides that personal and professional service procurements are not required to be synopsisized in the CBD. However, Section 1-1003.4(b)(1)

of the DAR provides that notwithstanding the above exception, contracting officers shall synopsis personal and professional service procurements when it is feasible and practicable to do so and when it is in the United States' best interests. Because appraisal contracts are awarded in accordance with the particularized procedure contained in the Navy Real Estate Manual (a procedure similar to that used by other government agencies in procuring appraisal services) and because of the nature of the services acquired, the Navy does not believe that their synopsis is always in the best interests of the United States. Consequently, it ordinarily does not synopsis appraisal contracts in the CBD. In this instance, the Navy believes that this contract is not properly characterized as an appraisal contract. Thus, the Navy agrees that it was feasible, practicable and in the best interests of the U.S. to synopsis this procurement and that it should have been done.

FINDING C: GAO found that NAVFAC used a modified rotating policy to solicit prospective contractors but limit the number of potential offerors based on a variety of factors. GAO believes that using prequalified lists and rotating lists have been accepted as methods to be used in soliciting prospective contractors, if the agency strictly adheres to the requirements of placing a synopsis of all proposed procurements over \$10,000 in CBD. There is no question that their use was not intended to supplant the CBD requirement. NAVFAC cited a number of factors they used in selecting offerors such as: geographic location, familiarity with local laws and size, complexity and importance of the contract. (p.2., Draft Report).

COMMENT: DOD partially concurs. The procedures contained in Section 16 of the Navy Real Estate Manual for the selection of appraisal contractors are a particularized procedure which requires the consideration of these factors. As explained above regarding Finding B, the DAR requires that personal and professional service contracts be synopsisized in the CBD when it is feasible, practicable and in the United States' best interest to do so. Because their synopsis does not always meet these criteria, appraisal contracts ordinarily are not synopsisized. DOD agrees that the qualified bidders list was not intended to supplant the requirement to synopsisize.

FINDING D: Current policy does not cover the treatment of unsolicited qualified contractors. The NAVFAC Real Estate Manual, under which this procurement was awarded, is silent as to the treatment to be accorded qualified contractors not solicited, but who indicate an interest in submitting a proposal. The Defense Acquisition Regulation (DAR) is also silent on this point. The procedure used by NAVFAC in awarding this contract was in accordance with written instructions in Navy manuals. It is Navy policy to spread work among qualified contractors. (p.9, Draft Report).

COMMENT: DOD concurs. The Navy Real Estate Manual, current at the time this contract was awarded, was silent as to the treatment to be accorded qualified appraisers not solicited, but who indicated an interest in submitting a proposal. However, as indicated in the attached letter dated 9 March 1983, the Navy will modify the Real Estate Manual to require the full and careful evaluation of proposals submitted by unsolicited qualified appraisers. All Engineering Field Divisions have been notified of this change and have been asked to implement it immediately.

CONCLUSION

CONCLUSION: GAO believes that the statutory requirements and Comptroller General decisions interpreting this requirement are clear, i.e., a synopsis of proposed procurement over \$10,000 must be placed in the CBD; solicitations must be provided on request and the Agency must consider all proposals submitted. (p.5, Draft Report).

COMMENT: DOD partially concurs. All prospective procurements over \$10,000 must conform with applicable statutory and regulatory requirements with respect to placement in the CBD. In this instance, 15 U.S.C. § 637(e)(7) did not statutorily require its synopsis in the CBD. Further, DAR 1-1003.1(c)(vii) provides that personal and professional services are not required to be synopsisized in the CBD. However, Section 1-1003.4(b)(1) of the DAR provides that notwithstanding the above exception, contracting officers shall synopsisize personal and professional service contracts when it is feasible and practicable to do so and when it is in the best interests of the United States. DOD concurs that this contract should have been synopsisized in the CBD and that all proposals submitted should have been fully and carefully evaluated.

RECOMMENDATIONS

RECOMMENDATION 1. GAO recommends that NAVFAC place a synopsis of all procurements over \$10,000 in the CBD. (p.5, Draft Report).

COMMENT: DOD concurs with regard to all procurements required by statute and by the DAR to be placed in the CBD.

RECOMMENDATION 2. GAO recommended that NAVFAC provide, upon request, solicitations of proposed procurements to qualified offerors. (p.5., Draft Report).

COMMENT: DOD concurs.

RECOMMENDATION 3. GAO recommends that NAVFAC consider proposals from unsolicited proposers as well as those solicited. (p.5., Draft Report).

COMMENT: DOD concurs.

RECOMMENDATION 4. GAO recommends that NAVFAC revise its Real Estate Manual so that its procedures are in compliance with statutory requirements. (p.5., Draft Report).

COMMENT: DOD concurs. The Navy will review the NAVFAC Real Estate Manual to ensure that it complies with the law.



DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
200 STOVALL STREET
ALEXANDRIA, VA 22332

IN REPLY REFER TO
9 March 1983

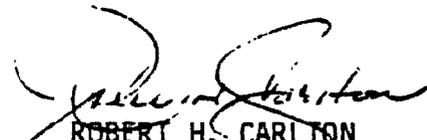
Mr. Ross Scheel
Northern Division, 24A
Naval Facilities Engineering Command
Philadelphia, PA 19112

Subj: Appraisal Procurement and Selection

Ref: (a) NAVFAC P-73, Chapter 16
(b) GAO Draft Letter Report No. 6188

Dear Ross,

Reference (a) provides policy on contract appraisal procurement, proposal solicitation, and selection. By reference (b) GAO recommended that unsolicited proposals, if received, be given consideration in the selection process. This is to inform the staff of such new policy, effective upon receipt of this letter. Appropriate manual change will be provided at a later date.


ROBERT H. CARLTON
Chief Appraiser

Distribution:
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