



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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August 17, 1973

R. D. Sweeney, Esquire
Suite 805 Wilshire-Flower Bldg.
615 South Flower Street
Los Angeles, California 90017

Dear Mr. Sweeney:

This is in reference to the September 8 and October 11, 1972, telefax messages from Harbor Boat Building Company, and to your subsequent correspondence on its behalf, protesting against the award of contracts under invitation for bids (IFB) No. N62791-73-B-0433 and N62791-73-B-0471, issued by the Supervisor of Shipbuilding, 11th Naval District, San Diego, California.

IFB - 0433 was for the drydocking and repair of utility landing craft LCU-1628, and IFB - 0471 called for similar work on LCU-1617. Both solicitations contained a requirement that the work be performed in the San Diego area. Your client's bids on the two procurements, while apparently low, were rejected because they indicated Terminal Island, California, a distance of approximately 100 miles from San Diego, as the place of performance. Awards in both instances were then made to the second low bidders.

You object to the use of the geographic restriction in these invitations, and to the Navy's Home Port Policy which results in such restrictions. You assert that this policy violates various procurement laws and regulations because it restricts competition and because it is contrary to various national policies regarding a broad mobilization and industrial base. You also claim that the requirement for performance in the San Diego area was not a material requirement of these solicitations and therefore should have been waived so as to permit acceptance of your client's bids.

The Navy reports that the Home Port Policy, which calls for the maximum possible amount of ship maintenance to be performed on a naval vessel in the vessel's home port, was established by the Chief of Naval Operations to "minimize disruption to Navy Families" in an effort to eliminate a significant problem with respect to personnel retention. This policy was implemented by a revision dated April 29, 1971 to section 7-3.4 of the Naval Ship Systems Command's

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B-176949
B-177228

Ship Repair Contract Manual. The revised section provides that, except in certain limited circumstances, "the performance of work shall be restricted to the home port area to which such ships and craft have been assigned, and bids or proposals shall be solicited only from qualified firms within the home port area." The section also provides for the broadening of the geographical area if adequate competition or reasonable prices cannot be obtained within the home port area. It is further reported that the geographic restrictions in the two IFBs were included therein pursuant to the Manual provision quoted above, since both the LCU-1628 and LCU-1617 were homeported in San Diego, and that your client's failure to meet these IFB provisions required rejection of its bids.

The basic principle underlying Federal procurement is that full and free competition is to be maximized to the fullest extent possible, thereby providing qualified sources an equal opportunity to compete for Government contracts. See 10 U.S.C. 2305; ASPR 1-300.1. However, it is well established that legitimate restrictions on competition may be imposed when the needs of procuring agencies so require. 42 Comp. Gen. 102 (1952). Many of these restrictions are specifically provided for in the Armed Services Procurement Regulation (see, for example, ASPR 1-1101, *et seq.*, regarding qualified products lists). Others, which are not specifically mentioned in ASPR, are imposed in accordance with the particular need of the Government, and may involve such things as product experience, 48 Comp. Gen. 291 (1959); ability to demonstrate a complex system having specified performance features, 49 Comp. Gen. 357 (1970); and geographic requirements, B-157053, August 2, 1965 and B-157219, August 30, 1965. Our Office has taken the position that these various solicitation provisions, while obviously restrictive of competition in the broadest sense, need not be regarded as unduly restrictive when they represent the actual needs of the procuring agency. 52 Comp. Gen. _____ (B-175254, April 4, 1973); B-157053, *supra*. Further, the fact that one or more bidders or potential bidders cannot comply with the requirements of particular solicitation provisions does not automatically make those provisions unduly restrictive. B-175254, *supra*.

In support of its policy of restricting ship repair work to home ports, the Navy states the following:

The intent of this policy is not to favor the award of overhaul contracts to any particular area but, instead, to minimize disruption to Navy families. While family separation has always been, and always will be, an expected part of Navy life, unnecessary separations must be avoided if the Navy is to retain the trained manpower necessary for the future. * * *

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* * * Family separation is a hardship and is one of the more compelling reasons cited for not adopting a Navy career. With the advent of an all volunteer Navy, and with strenuous competition for manpower from the other Armed Forces and from the civilian sector, it is imperative that the quality of Navy life be maintained at an acceptable level. One important way we can improve the average Navy man's life is to allow him time with his family; one way chosen to do this is to accomplish the maximum possible amount of ship maintenance in the ship's homeport.

Our records indicate that prior to implementation of the Home Port Policy, procurements of this type were generally restricted to potential contractors located within the particular naval district involved. As you point out, we stated, in our Report to the Congress, B-133170, March 19, 1970, that this limitation was "not conducive to keen competition." The Congress refused, however, to legislatively prohibit the use of such geographic restrictions in ship repair procurements. See 114 Cong. Rec. 29341-45, 29346-47. Therefore, while it is clear that this policy may sometimes result in increased costs to the Government and may prevent some bidders who are otherwise qualified from competing for an award, we cannot agree that the Home Port Policy is unduly restrictive of competition so as to contravene the statutory requirement for competitive procurements. We think the record in this case adequately shows that the Navy's restrictive requirement "serves a useful or necessary purpose" in meeting its needs, B-157053, supra, since personnel morale and retention will be better served by minimizing the occasions on which its ship crew personnel must be separated from their families. Furthermore, as the Navy points out, home port restrictions are not to be applied if they would "prevent the obtaining of adequate competition" or would result in unreasonably high costs. (The Navy further points out that adequate competition was obtained in these procurements since bids were received from 4 firms within the restricted area in response to each solicitation). Accordingly, we do not believe that application of the Home Port Policy to Federal procurements is illegal. n

You have asserted, however, that none of the crew members attached to the LCU-1617 was married. It appears to us that where all or most of the crew of a particular vessel are unmarried, the home port restriction does not serve to foster the stated purpose of the Home Port Policy and, therefore, the policy should not be applied. However,

B-176949
B-177228

we are not in a position to know whether it would be administratively feasible for procurement officials to determine, prior to the issuance of solicitations, if Home Port Policy considerations are applicable to specific vessels. If such a determination feasibly can be made, we believe the geographic restrictions of the Home Port Policy should not be imposed when it is shown that the policy has no applicability to a given procurement. Therefore, in our letter of today to the Secretary of the Navy, copy enclosed, we are suggesting that appropriate steps be taken to waive the home port restriction in those cases where its application would not further the intent of the Home Port Policy.

Sincerely yours,

R.F.KELLEN

Deputy Comptroller General
of the United States