
Unusual and Compelling Contract Authority¹

The Scenario

The auditor's objective was to determine if the Department of Defense followed proper procedures for administering, executing, and reporting the use of funds for Global War on Terror (GWOT) military construction projects. The auditor randomly selected ten contracts for review. The auditor noted that three of the sample contracts contained contact information for the same agency personnel. Mr. White was the Contracting Specialist, and Mr. Black, Chief of Contracting, was the Contracting Officer. Mr. White and Mr. Black awarded three contracts to the same contractor, Yellow International. The following procedures were used to award the three contracts: the Project Manager in theater developed the requirements for the projects; the Contracting Specialist prepared the contract documents; and the Contracting Officer approved the contract documents.

During an initial interview with the auditor, Mr. White and Mr. Black indicated that they always give one hundred percent to ensure that all GWOT mission requirements are met. Due to the contingency environment, contracts were awarded using the Unusual and Compelling Urgency authority. Interviewees stated that the urgency of the projects required shortened timeframes for awarding the contracts; however, they requested bids from as many potential sources that were practical under the circumstances.

Auditor review and analysis of the three suspect contract files disclosed the following issues:

- Negotiations took place between Mr. White and Yellow International prior to soliciting other contractors. After soliciting other contractors, Mr. White did not provide the other contractors with the same information that he gave to Yellow's representative, Mr. Green.
- Yellow International submitted a voluntary revised price proposal after the receipts of the proposals were due for Contract Number One. Mr. White used the untimely voluntary price proposal as the basis for the cost comparison. As a result, Yellow International gained an unfair competitive advantage and was awarded Contract Number One.
- For Contract Number Two, firms were solicited using the Federal Business Opportunities website. Five potential contractors attended a construction site visit; however, the contract files contained only one proposal from Yellow

¹ FAR Subpart 6.302-2, Unusual and Compelling Urgency states: "When an agency's need for the supplies or services is of such an unusual or compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for. This authority applies to those situations where (1) An unusual or compelling urgency precludes full and open competition; and (2) delay in award would result in serious injury, financial or other to the Government...The statutory authority requires that agencies shall request offers from as many potential sources as practicable under the circumstances..."

International. Mr. White could not provide any documentation indicating that he made additional effort to solicit more competition.

- The auditor noted that Justification and Award (J&A) documents were not included in the Contract Number One and Contract Number Two files, although, the contracts were awarded two years before the auditor's review. The auditor's review of FAR Subpart 6.303-1, Requirements for Justifications, disclosed that justifications for contracts for other than full and open competition may be prepared and approved within a reasonable time after the contract award. The auditor concluded that a two year delay in obtaining the required justification and approvals was not reasonable.
- Review of the draft J&A for Contract Number Two showed that Mr. Black indicated that the project was necessary to meet immediate troop needs; however, the original intent of the project was to house the onsite contractor. The auditor noted that the contract's purpose did not meet the requirements of FAR Subpart 6.30-2, Unusual and Compelling Urgency.
- Mr. White prepared, and Mr. Black approved, a Justification that contained inaccurate information regarding the number of contractor proposals received and the contract award date.
- For two contracts, Mr. White and Mr. Black justified other than full and open competition based on the need for an experienced architect. However, Yellow International's proposal stated that they planned to subcontract the work to Red Company, who had no previous experience. Both contracts were awarded to Yellow International.

After completing audit fieldwork, the auditor briefed his management on the results of his work. Audit management agreed with the auditor's conclusion that Mr. White, Mr. Black, and Yellow International might be involved in a scheme to limit open competition and award contracts to Yellow International and/or their subcontractor, Red Company. Further, audit work showed that contracting personnel may have intentionally violated FAR Subpart 6.302-2 and 6.303-1 requirements. As a result, the auditor was told to prepare a referral summarizing the audit results and forward the information to the Defense Criminal Investigative Service for review.

General Comments / Lessons Learned. Unusual and Compelling Contract Authority is most commonly used by the Department of Defense during international conflicts and natural disasters. In environments where fair and open competition requirements are not followed to award contracts, the probability of fraudulent activities can increase. FAR Subpart 6.302-2 contains examples of circumstances and situations that permit the use of other than full and open competition such as:

- When the supplies or services required by the agency are available from only one responsible source, or for the Department of Defense, from only one or a limited

number or responsible sources, and no other type or supplies will satisfy agency requirements.

- Substantial duplication of cost to the Government that is not expected to be recovered through competition.
- Unacceptable delays in fulfilling the agency's requirements will occur if the contract is not promptly awarded.
- Unique supplies or services needed by the agency are available from only one or a limited number of sources, or from only one or a limited number of suppliers, with unique capabilities.

An agency cannot justify providing less than full and open competition when the following conditions exist: the agency failed to complete advanced planning or the agency has concerns regarding the amount of funds available (e.g. funds will expire) for the acquisition of supplies or services.

FRAUD INDICATORS

- **Contracting personnel working together award numerous contracts to the same company.**
- **Review of contract files indicate that a specific contractor may have gained an unfair competitive advantage such as having access to information that was not provided to other competitors or submitting proposal documentation after the established due date.**
- **Contracting officials are not able to demonstrate that efforts were made to solicit competition from all potential bidders.**
- **The organization has not completed the required J&A documents within a reasonable time.**
- **J&A does not meet the FAR Subpart 6.303-1 requirements and/or contains inaccurate information.**
- **Contract's purpose does not meet the requirements of FAR Subpart 6.30-2, Unusual and Compelling Urgency.**