



## DETERMINATION AND FINDINGS

### **AUTHORITY TO AWARD A CONTRACT FOR THE DRYDOCKING DEPOT LEVEL MAINTENANCE AND REPAIR OF SURFACE SHIP COMBATANTS LOCATED IN THE PUGET SOUND HOMEPORT AREA, BASED ON PUBLIC INTEREST EXCEPTION TO REQUIREMENT FOR FULL AND OPEN COMPETITION**

Upon the basis of the following findings and determination, which I hereby make, as the Acting Secretary of the Navy (SECNAV), pursuant to the public interest exception to the requirement for full and open competition, 10 U.S.C. 2304(c)(7) and Federal Acquisition Regulation (FAR) 6.302-7, the Naval Sea Systems Command (NAVSEA) may award a sole source contract for short-term depot level repair and maintenance drydocking availabilities of FFG/DDG ships homeported in the Puget Sound area to Todd Pacific Shipyards Corporation (Todd) 30 days after notice of this determination has been provided to Congress. [See Paragraph 8 below for the list of drydocking availabilities scheduled for the Puget Sound area from FY 2011 thru FY 2014]. The contemplated contract will be a multi-ship/multi-option (MSMO) contract, with a period of performance not to exceed five years, to cover the four drydocking availabilities in paragraph 8 and two "to be determined" drydocking availabilities, with Todd as the prime contractor and its teaming partners listed in Paragraph 1 below. This Determination and Findings (D&F) essentially continues in part the approach to ship repair in the Puget Sound area that the Navy has used for the past 10 years, while applying the current MSMO model and setting aside for competition the Advance Planning/Execution of non-docking availabilities and continuous maintenance/emergent repairs for all ships homeported in Puget Sound.

### FINDINGS

1. D&F No. 81,142, signed by the Secretary of the Navy on 6 April 2000, authorized NAVSEA to award a contract (N00024-00-C-8514) for the short-term depot level repair and maintenance availabilities (docking and non-docking) of DDG/FFG vessels homeported in the Puget Sound area to Todd. The purpose of this action – executed pursuant to the public interest exception to the requirement for full and open competition, 10 U.S.C. 2304(c)(7) and Federal Acquisition Regulation (FAR) 6.302-7– was to allow these ships to stay in the Puget Sound homeport (encompassing the cities of Seattle, Everett and Bremerton) despite the lack of competition in the homeport for the docking availabilities. The D&F approved a multi-ship/multi-option cost-plus-incentive fee contract, with a period of performance not to exceed ten years. In accordance with D&F

No. 81,142, Todd, acting as the prime contractor, entered into a non-exclusive teaming agreement with [REDACTED]

[REDACTED] (as subcontractors) in an effort to ensure the continuance of combatant repair and maintenance capabilities in the Puget Sound area. This effort included both docking and non-docking CNO scheduled repair availabilities at the Todd Harbor Island facility, as well as continuous maintenance and emergent repairs performed outside of CNO scheduled maintenance periods. This teaming arrangement has proven beneficial to the timely execution of such repairs and has ensured the sustainability of the local business base.

2. The homeport of all the surface combatants that are the subject of this procurement is Naval Station Everett, Everett, Washington. Pursuant to the authority of FAR Part 15, a sources sought notice was published via FedBizOpps on 9 September 2009 in an effort to determine which firms were interested in performing the availabilities covered by this D&F. The Government received responses from Todd, which has facilities in Everett and in Seattle, which is 25 miles south of Everett, and from [REDACTED]

Todd indicated that it could perform all contemplated availabilities. [REDACTED]

[REDACTED] The results of this sources sought indicate the following: (a) Todd is the only contractor in the Puget Sound homeport (comprising Seattle, Everett, Bremerton) that has facilities to dry-dock DDG ships; and (b) to achieve competition for a contract for all drydocking availabilities, the Navy would have to expand the solicitation beyond the Puget Sound homeport. The "homeport" of a vessel is defined as follows: 10 U.S.C. § 7299a requires that for any short term ship repair work, the Navy must compete the work in the homeport of the vessel if there is adequate competition in the homeport. To clarify the geographic meaning of the word "homeport" in this statute, the Navy homeport policy defines the "homeport" area for solicitation purposes as a grouping of ports within a 75 mile radius of, and less than 1.5 hours one way travel (using normal modes of transportation of the particular region) from, the Naval facility where the ship is homeported.

3. To keep DDG and FFG ships in the Puget Sound homeport for CNO scheduled dry-docking availabilities and still comply with competition requirements, the following alternatives have been explored:

- **Competing docking availabilities using the expanded solicitation area, which includes Portland, Oregon.** This alternative does not guarantee ships will remain in the Puget Sound homeport area, thereby potentially adversely impacting PERSTEMPO/OPTEMPO and Quality of Life.

- **Assigning all docking availabilities to Puget Sound Naval Shipyard (PSNS).** This approach deviates from Navy policy and the past practice of utilizing the capitalized facilities of the private sector to perform this type of work. Additionally, this approach is not feasible because PSNS does not have the docking facilities available during the required periods.
- **Using PSNS as the place of performance and conducting a private sector competition for work package performance.** This approach deviates from Navy policy and the past practice of utilizing the capitalized facilities of the private sector to perform this type of work. Furthermore, this approach has demonstrated a 30% increase in private sector costs due to the inefficiencies involved in having the private sector's workers work away from their facilities and incurring transportation costs.
- **Making the Navy owned dry-dock leased to Todd available to competitors.** Todd is currently leasing AFDM-10 (RESOLUTE) from the Navy through FY12, with options to extend the lease. The lease agreement includes the clause "Use of Drydock for U.S. Navy Ship Availabilities," which permits the Navy to make the Navy-owned dry-dock available to competing contractors. Todd operates the dry-dock on a "Superfund Site" and has raised legitimate concerns about the allocation of risks and liabilities arising from allowing a third-party prime contractor to use the dry-dock. Todd has requested indemnification by the Government against any harm caused by a visiting prime contractor. Indemnification under FAR Part 50 is not appropriate because, among other things, the situation does not require extraordinary relief, and adequate insurance may be available in the private sector. Nevertheless, this course of action is not prudent because it unnecessarily exposes the Government to potential costs and delays caused by protracted litigation.

4. Generally speaking, the MSMO acquisition model involves the procurement of execution planning, ship repair, modernization, and inter-availability maintenance requirements for specific ship classes in respective homeports. In the instant procurement, given the aggregation of requirements, there are four (4) types of "contract bundling"-related issues that must be considered and resolved. Concerning the first type, the MSMO acquisition model involves the "consolidation" of contract requirements, which mandates justification under 10 U.S.C. § 2382 and DFARS 207.170-3; significantly, the requisite justification for the consolidation is in the MSMO Acquisition Strategy, dated 22 November 2004, which is hereby incorporated by reference in support of the justification of the consolidation in this procurement.

The second and third types of "contract bundling" are addressed under the Small Business Act (in pertinent part, 15 U.S.C. § 631, et seq.) (SBA) and the Federal

Acquisition Regulation (FAR). Both the SBA, at 15 U.S.C. § 632(o), and the FAR, at Section 2.101, define “bundling,” in pertinent part, as the consolidation of “two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern.” In the instant procurement, the contract being authorized does not fit this definition of bundling for two reasons. First, the consolidated requirements for the supplies (repaired, mission-ready vessels) were not previously provided under separate smaller contracts; in fact, as described above in paragraph 1, these supplies have been provided for the past 10 years under one contract. Second, the single contract being authorized here is not likely to be unsuitable for award to a small business because, in accordance with this Determination and Findings, the prime contract will be negotiated and awarded to Todd Pacific Shipyards, which is a small business under NAICS Code 336611 (Ship Building and Repairing) and the incumbent prime contractor that has been performing this work for the past 10 years. Therefore, the subject procurement does not fall within the definition of SBA and FAR bundling, and those restrictions do not apply to this acquisition.

The fourth type of contract bundling is “Competition in Contracting Act (CICA) bundling,” which is addressed in 10 U.S.C. § 2305(a)(1). CICA permits solicitations to contain restrictive provisions and conditions, but only to the extent necessary to satisfy the needs of the agency. In this procurement, as explained above in paragraph 2, the market survey disclosed that [REDACTED]

[REDACTED] Todd is the only company that has a NAVSEA certified dry-dock capable of docking FFGs and DDGs. Under the circumstances, the Navy is restricting the scope of this authorization to the extent necessary to satisfy its dry-docking needs, and the non-docking availabilities will be acquired under a separate competitive procurement.

Generally speaking, the explanation of the needs and benefits justifying the aggregation of these 4 docking availabilities and two “to be determined” docking availabilities is contained in the MSMO Acquisition Strategy, dated 22 November 2004, which is hereby incorporated by reference to address this “CICA bundling” issue. More specifically, the Navy’s paramount need in ship repair and maintenance is to meet, in a full and timely manner, the demands of the Fleet Response Plan (FRP), which focuses on the crucial requirements of Operational Availability (A<sub>o</sub>) and surge readiness, requiring that our ships are ready to deploy quickly and with surge capability to support Carrier Strike Groups. The salient benefit provided by the consolidated MSMO model is that it is uniquely designed to meet the FRP’s demands through the following effects, which are caused and advanced by the MSMO structure:

- Establishment of long-term relationships between ship class, MSMO contractor, and vendors, promoting agile and responsive teaming arrangements throughout a ship's training/maintenance/deployment cycles;
- Reduction of cost and rework on repetitive repair work and alterations on same ship class/platform, reflected in the favorable bending of the Learning Curve;
- Response, in a timely and effective manner, to emergent work/growth (critical for the surge capability concept);
- Promotion of overall program stability for the Fleet and contractor, providing added incentives for contractor investment in facilities;
- Facilitation of level loading of work, resulting in improved contractor efficiencies and cost savings;
- Promotion of advance planning for repair availabilities through increased contractor participation in work package development and planning, which reduces overall costs and avoids delays caused by hand-offs of planning products to another contractor;
- Establishment of workforce familiarity with the specifics of a ship class (engineering plant, combat systems suite, etc.), enabling long-term functional excellence within a particular discipline (welding, electronics, machining, etc.); and
- Reduction of acquisition cycle time for the Government and contractor.

For the reasons explained above and in the MSMO Acquisition Strategy, the MSMO consolidated acquisition model, which is to be applied in the instant procurement, is necessary and justified.

5. In implementation of the 10 U.S.C. § 7299a requirement for competition for short term repair work, the Navy's homeport policy provides that if there is no adequate competition in the homeport, then the Navy shall expand the geographic area for solicitation of the short term availabilities equally in all directions from the location of the vessel, until adequate competition is achieved. Adequate competition is defined as the presence of two or more qualified bidders. Should a shipyard outside of the Puget Sound homeport win a competition to perform the 4 docking availabilities, the PERSTEMPO program, which has three specific CNO designated limits, including HOMEPORT TEMPO, would be negatively impacted. HOMEPORT TEMPO is defined as the amount of time a crew and its ship are outside the homeport. The Fleet considers

that for any day that the vessel is out of the homeport that exceeds a 50% ratio for the 24-26 month Fleet Response Training Plan cycle, the ship would be required to remain in its homeport until such time as the 50% ratio is restored. Until the 50% ratio is restored, the  $A_o$  of the ship is limited, requiring a mitigation action. Based on an average length of a depot level availability, an out of homeport Dry-Docking Selected Restricted Availability (DSRA) would result in a loss of about 36 days per year of operational availability for training or underway operations. Mitigation could require delaying or cancelling future underway days for the vessel, which will have a ripple effect on the  $A_o$  of other ships, impacting not only the  $A_o$  of the vessel involved but of other ships in the Fleet which now are required to operate in that vessel's place.

Based upon the negative impact to the PERSTEMPO program, the Homeport Policy to expand the geographic area should be waived for this acquisition.

6. Quality of Life (QOL) is also an important consideration in order to maintain crew morale for the Sailors assigned to these platforms, particularly during a time of war. During short-term docking periods outside the homeport, sailors are separated from their families for a period of one to six months; family separation is a hardship that can have a severe negative impact on the QOL for the crew and their families. While family separation is an expected part of Navy life, unnecessary separation must be avoided if the Navy is to retain the trained manpower necessary for the future. Personnel morale and retention will be better served by minimizing family separation.

7. Further promoting QOL, it is anticipated that conducting the DDG/FFG ship dry-dockings in the homeport of the vessels will decrease the commuting time and ultimately enhance crew morale, which will be a positive influence on retention. The U.S. Navy wants to retain experienced sailors to promote proficiency and efficiency of naval forces. On this point, the estimated average cost of recruiting and training a single Sailor is approximately \$47,000. This plan could represent a significant cost avoidance to the Navy in recruiting effort and funding alone.

8. Accomplishment of the dockings listed below in Puget Sound will ensure the maintenance of the critical skills of the workforce in a fleet concentration area in order to meet military requirements and facilitate defense needs, including emergency dry-dockings. Each of the vessels listed below is homeported at Naval Station Everett.

FY	Hull	Availability Type
[Redacted Content]		

9. Currently, the West Coast contractors who historically have received the majority of the availability work are a part of the Todd team. This teaming arrangement, which is non-exclusive, has strengthened the business base in the Puget Sound homeport area by providing these team members, and other contractors who show interest, an opportunity to compete at the subcontract level and to maintain their existing capabilities by working on larger projects. The anticipated contract will contain a clause to optimize subcontracting opportunities.

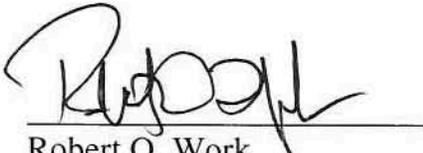
10. There are other contractors on the West Coast with dry-docks capable of docking DDG Class ships, but none is located in the Puget Sound homeport area. Utilization of these private sector capabilities to support the PACNORWEST combatant dockings does not solve the OPTEMPO and Quality of Life issues associated with conducting the dockings out of the homeport area.

11. The contract will be structured around a base Contract Line Item (CLIN) addressing the production effort for the [REDACTED] availability, and the other option CLINS are for planning and execution of the remaining availabilities, with the period of performance not to exceed five years. The period is not to exceed five years because, in looking at the scheduled availabilities, it was determined that there were no dry-docking availabilities in years 6-10. Based upon this, the Navy will investigate full and open competition beyond the five year period. The MSMO approach provides consistency and stability in the method in which maintenance availabilities are acquired for the PACNORWEST DDG/FFG ships to facilitate planning, not only from a Fleet maintenance perspective, but also for the Sailors assigned to DDG/FFG vessels. Awarding the contract to Todd and its subcontracting team is an affordable solution that would enhance PERSTEMPO/OPTEMPO and Quality of Life for the PACNORWEST DDG/FFG vessels.

12. The estimated total value of this contract is approximately [REDACTED] in Fiscal Year 2010 dollars. It is estimated that this effort will not result in any increased budgetary requirements over the course of this contract action.

**DETERMINATION**

Based on the findings set forth above, it is hereby determined, pursuant to 10 U.S.C. 2304(c)(7) and FAR 6.302-7, to be in the public interest to award a multiple year/multiple ship/multiple options contract, with a period of performance not to exceed five years, for docking depot level repair and maintenance availabilities of DDG/FFG ships homeported in the Puget Sound homeport area to Todd Pacific Shipyards Corporation. Awarding a contract to a contractor outside the homeport area would adversely impact PERSTEMPO/OPTEMPO and cause extraordinary personnel disruption and family impacts that may ultimately affect military retention. Consequently, I hereby waive the SECNAV Homeport Policy requirement (that would otherwise apply to these facts) that would require expanding the solicitation beyond the homeport area to achieve competition.

  
\_\_\_\_\_  
Robert O. Work  
Acting

12 Nov 2010  
\_\_\_\_\_  
Date