

order as representatives of the Authority.

Sec. 2. Use of contract for competitive bid and negotiated price awards.

(a) The NSA-LUMPSUMREP Contract is a Master form of fixed price contract and is applicable to ship repair work awarded as a result of competitive bidding or negotiation. As a general rule all work awarded under the NSA-LUMPSUMREP Contract must be awarded upon the basis of competitive bids. Revised Statute section 3709 (41 U.S.C. 5), which requires the award of contracts on the basis of competitive bids, however, permits award upon a negotiated basis in certain situations, that is, "where immediate delivery or performance is required by the public exigency."

(b) There are set forth in paragraphs (b)(1) to (3) of this section three (3) examples of situations where the negotiation of fixed price awards for the accomplishment of work under the NSA-LUMPSUMREP Contract will be permitted in lieu of competitive bidding:

(1) *Where the desired results from competitive bidding cannot be obtained.* For example, where there is doubt as to the reality of competition or the fairness or reasonableness of a low bid, all bids shall be rejected. If the ship's availability permits a new Invitation for Bids for the work in question shall be issued. If the bids received as a result of the second invitation are not considered satisfactory the bids are to be again rejected and prices of all specification items are to be negotiated with and the job awarded to the lowest bidder. If the low bidder refuses to accept the award upon the condition referred to the offer of award subject to price negotiation may be made to the next lowest bidder, etc. Negotiated awards in such cases shall be made in accordance with the conditions set forth on the invitation form, e.g., time specified, liquidated damages, etc. If a satisfactory price cannot be secured by negotiation with the bidders as herein proved an award may be made upon a negotiated basis approved in section 5 of this order.

(2) *Where the element of time is paramount.* There will be instances where expeditious ship turnarounds will ne-

cessitate the award of work without the delay involved in awarding on the basis of competitive bids. In such cases immediate negotiation for a fixed price with one contractor will be permissible. However, full consideration must be given to the factors involved in order to determine whether, under the circumstances, the time requirements make necessary the negotiation of price rather than using the competitive bid procedure. Such relevant factors are the individual ship's commitments with respect to loading berths, sailing dates, and the charter hire, etc., that might accrue in the event additional ship lay-time is required because of competitive bidding. Definite dollar and time values cannot be established as specific guides for determining when to negotiate. The individual ship and circumstances involved are the governing elements. The practice of consistently favoring one contractor where this type of repair is required will not be permitted but instead, to the maximum extent possible, all qualified contractors in the particular port shall be given the opportunity to perform work for the National Shipping Authority.

(3) *Extra items of work found subsequent to the awarding of the work covered by the original specifications.* Where extra items of work are required after the commencement of the awarded work, it is permissible to negotiate with the contractor who is performing the awarded work, for the accomplishment of such extra work under the provisions of Article 6 of the NSA-LUMPSUMREP Contract. A discussion of this procedure is set out in section 8 of this order. However, where items of extra work are found after examinations have been made as called for by the original specifications, negotiation with the contractor to perform such items of extra work shall be permitted only if the aggregate estimated cost of such items of extra work would not amount to a substantial part of the entire job. If the items of extra work amount to a substantial part of the entire job, they shall be awarded in the same manner and after consideration of the same factors as are set forth above for awarding original work.