



United States General Accounting Office  
Washington, DC 20548

## Decision

**Matter of:** Specialty Diving, Inc.

**File:** B-285939

**Date:** October 16, 2000

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Deborah Wallace for the protester.

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### DIGEST

Agency decision to continue to procure underwater hull cleaning and surveying services as an integrated package is reasonable and legally unobjectionable where the agency determines that this approach--providing cleaning and surveying services in tandem--is necessary in order to accurately assess a hull's underwater condition and to minimize the disruption to a vessel's ability to be deployed.

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### DECISION

Specialty Diving, Inc. (SDI) protests the terms of request for proposals (RFP) No. N00024-00-R-4091, issued by the Department of the Navy for worldwide hull cleaning and related services, including underwater hull surveys, of Navy, Coast Guard, Army, and Military Sealift Command ships and craft.

We deny the protest.

The RFP, issued on an unrestricted basis on May 18, 2000, contemplates the award of an indefinite-quantity, fixed-priced contract for the base period and four 1-year option periods.<sup>1</sup> RFP at 32, 84.

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<sup>1</sup> The agency will award either one worldwide contract or two contracts--one for the East Coast and related areas (Zone A--Atlantic waters--inland waters along the East Coast of the United States, the entire North and South Atlantic, Gulf of Mexico, European Coast, Mediterranean Sea, and Arabian Gulf), and one for the West Coast and related areas (Zone B--Pacific and Indian waters--inland waters along the

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As relevant here, the RFP defines an underwater hull survey as follows:

a quantitative inspection and digital record of the condition of a vessel[']s underwater hull and appendages. The survey shall consist[] of a series of measurements of the hull plate thickness, hull coating thickness, and hull electro-potential. A minimum of one measurement per square foot of wetted surface area surveyed shall be taken for each of the data categories. Data readings shall be evenly distributed across the surveyed surface and each reading shall be correlated to its relative hull position [with an accuracy no less than +/- 6-inches]. The survey shall also include video of the surveyed surfaces and digital still images of all damage discovered.

Id. at 8, 19.

Item No. 0001 in the RFP describes the requirements for full hull cleaning (i.e., the removal of all marine fouling from the entire underwater hull and appendages). Id. at 12. Item No. 0014 describes the requirements for an underwater hull survey, in accordance with the above-quoted definition. Id. at 18-19.

In addition, the RFP requires an offeror to describe its proposed operations facilities for the performance of hull cleaning and related services, such as hull surveys, in Zones A and B, as appropriate. For each facility proposed, the offeror is to specifically identify its location, size, and capabilities, and whether the facility is currently owned by the offeror. If the offeror intends to obtain a facility after contract award, the RFP requires the offeror to provide a letter of commitment from the facility source, clearly identifying the number of days after contract award when the facility will become available for purchase or lease to the offeror. Id. at 95-96.<sup>2</sup> The RFP includes a sample letter of commitment for facilities. Id., attach. 5.

SDI filed this protest on July 27. Four firms, including SDI, submitted proposals by the closing time on August 9.

SDI objects to the agency's decision to procure underwater hull surveying services in conjunction with underwater hull cleaning services. While noting that the agency

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West Coast of the United States, the entire North and South Pacific, and Indian Ocean, and Persian Gulf). Id. at 4-5.

<sup>2</sup> Under the RFP's facilities evaluation subfactor, an offeror's facilities will be evaluated on the basis of their location, size, and general adequacy to support the operations to be performed under the contract. Id. at 113-14.

has historically procured these services together, SDI contends that the agency should now satisfy its needs by separately procuring each of these services.<sup>3</sup>

The Competition in Contracting Act of 1984 requires that agencies specify their needs and solicit offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete. 10 U.S.C. § 2305(a)(1)(A)(i) (1994). The determination of a contracting agency's needs and the best method for accommodating them are matters primarily within the agency's discretion. Northrop Grumman Corp., B-285386, Aug. 1, 2000, 2000 CPD ¶ 38 at 4.

For over 16 years, the agency has contracted for underwater hull cleaning and surveying services by conducting a single procurement for these services, including the last procurement for which a contract was awarded in 1995. Agency Report (AR) at 8. The agency explains that underwater hull cleaning and surveying services must be performed in close succession. AR at 9. More specifically, the agency requires the underwater portions of a hull to be cleaned shortly before a survey is performed so that these areas are free of marine slime, grasses, and barnacles which, if present, would preclude an accurate assessment of the hull's underwater condition. Id. In addition, when hull cleaning and surveying services are done in conjunction with each other, the potential disruption to the agency's ability to deploy a vessel is minimized. Id. at 10. The protester, in fact, "acknowledges that hull surveys can and should be performed in 'close succession' with hull cleaning." Comments at 2. On this record, the agency's decision to continue to procure services for underwater hull cleaning and surveying in an integrated package is reasonable and legally unobjectionable where the agency has determined, and the protester has failed to demonstrate otherwise, that this approach is necessary in order to obtain accurate underwater assessments and to minimize deployment disruptions. See, e.g., LaQue Ctr. for Corrosion Tech., Inc., B-245296, Dec. 23, 1991, 91-2 CPD ¶ 577 at 3-4; The Great Lakes Towing Co., B-235023, June 16, 1989, 89-1 CPD ¶ 570 at 2-3.

SDI also complains that "[t]he new specificity of the underwater hull survey component . . . is now so restrictive so as to now preclude the use of all former diver based systems in favor of a remotely operated vehicle (ROV) based inspection system. . . . [and] it creates a performance criterion peculiar to only one source [which] SDI believes . . . to be Imetrix[, Inc.]." Comments at 1.

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<sup>3</sup> In making this argument, SDI acknowledges that the circumstances here do not satisfy the regulatory definition of "bundling." See Federal Acquisition Regulation (FAR) § 2.101. Supplemental Comments at 4. In this respect, the agency is not "[c]onsolidating two or more requirements for . . . services, previously . . . performed under separate smaller contracts, into a solicitation for a single contract." FAR § 2.101. Rather, as SDI recognizes, the agency historically has procured underwater hull cleaning and surveying services in tandem. The regulatory coverage simply is inapplicable.

With respect to the type of technology used to conduct surveys, the agency explains that in the past, hull surveys primarily were performed by divers with hand-held sensors. As a result of technological advances, these surveys now can be performed not only by divers, but with ROVs equipped to carry the sensors. The agency states that the necessity for coordinating underwater hull cleaning and surveying services is the same whether divers or ROVs are used. AR at 2, 7.

With respect to the RFP's performance-based specifications, nowhere do these specifications preclude the use of divers or require the use of an ROV, let alone an Imetrix ROV. Rather, in accordance with the terms of the RFP, an offeror, like SDI, is required to "provide men and equipment to conduct a hull survey." RFP at 18-19. Thus, it is within the business judgment of an offeror to propose the particular methodology (divers, ROVs, or a combination thereof) for performing hull surveys which the firm believes will enable it to satisfy the terms of the RFP. We point out that SDI, in fact, states that "[n]ew hull survey ROV's are currently being constructed and [SDI] acknowledge[s] that the results they provide are vastly superior to those available from older diver based processes," and that "[w]e are not questioning the wisdom of [the agency] in choosing to utilize this technology [the use of ROVs] which provides improved data in less time." Comments at 3. On this record, we conclude that SDI has failed to articulate a valid basis for protest.

SDI further contends that Imetrix has a competitive advantage in this procurement because it has developed a commercially available ROV. Whether Imetrix has a competitive advantage or not, SDI has not demonstrated how it is prejudiced because Imetrix did not submit a proposal as a prime contractor. To the extent SDI may propose Imetrix as a subcontractor, this would further suggest that Imetrix's advantage will not prejudice SDI.<sup>4</sup>

Finally, SDI complains about the RFP requirement that an offeror provide letters of commitment for each facility proposed, identifying the location, size, and capabilities of each facility and the number of days after contract award when the facility will become available for purchase or lease to the offeror. In response, the agency explains that it must be able to evaluate whether an offeror will have facilities

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<sup>4</sup> Along this same line, SDI also speculated that "Imetrix has provided hull survey pricing to more than one offeror, and there is no assurance that the conditions of [Imetrix's] offer are exactly equal to all competitors." *Id.* at 1. After being told in a conference call that this issue amounted to nothing more than a dispute between private parties concerning whether a subcontractor offered the same pricing terms to various prime contractors, SDI finally conceded that "[w]hether or not Imetrix gave everyone the same terms and conditions is irrelevant." Supplemental Comments at 1.

available in order to satisfy the RFP's 24-hour response time requirement, a requirement which the protester does not challenge. Supplemental AR at 8.

We believe that requiring an offeror to furnish letters of commitment for proposed facilities provides a reasonable basis for the agency to evaluate whether the offeror will be able to timely comply with the RFP's 24-hour response time requirement. Although SDI believes that it is burdensome in terms of costs and time to identify proposed facilities prior to award, the alleged burden associated with preparing a proposal responsive to the agency's needs does not make the agency's requirement in this regard unreasonable. We point out that with respect to the letters of commitment, an offeror is not required to lease or own a facility prior to award, but rather to simply identify by location, size, and capabilities a facility which will be available to it within a particular time after award. On this record, SDI has provided no basis to question the reasonableness of the requirement that it furnish with its proposal letters of commitment for facilities.

The protest is denied.

Anthony H. Gamboa  
Acting General Counsel