

DECISION



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

FILE: B-219404 **DATE:** September 19, 1985
MATTER OF: Norfolk Ship Systems, Inc.

DIGEST:

1. A protester's failure to submit copies of certain documents to the agency as provided to GAO contravenes the requirement of GAO's Bid Protest Regulations that a complete copy of the protest be furnished to the agency. Although GAO declines to dismiss the protest because the agency did not timely advise GAO that the documents had not been submitted and was able to adequately respond without them, the information contained in the documents will not be considered.
2. Protest issues based upon alleged improprieties in a request for proposals concerning the evaluation criteria to be utilized in the source selection process must be filed prior to the closing date for receipt of initial proposals in order to be considered.
3. Where a procurement has not been set aside for small businesses and the solicitation does not provide for special consideration of small business firms, the agency has no legal basis for giving preferential treatment to small business firms in the selection process.
4. In a negotiated procurement, award need not be made to the low offeror unless the solicitation so indicates. Where a solicitation clearly provides that technical capability is three times as important as proposed cost, GAO will not object to the award of a contract to the higher cost, but technically superior, offeror.

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5. GAO will not dispute an agency's determination as to the realism of proposed costs, unless the determination is shown to be unreasonable, because the agency is clearly in the best position to make such judgments.
6. An agency is not required to equalize competition for a particular procurement by considering the competitive advantage accruing to an offeror due to its incumbent status provided that such advantage is not the result of unfair government action or favoritism.

Norfolk Ship Systems, Inc. (NSSI), protests the award of a contract to Stanwick Corporation, the incumbent contractor, under request for proposals (RFP) No. N00421-85-R-0040, issued by the Department of the Navy. The procurement is for the acquisition of hardware and logistics management services to support the Navy's E-2C and C-2 aircraft. NSSI essentially complains that the Navy improperly conducted the source selection process. We dismiss the protest in part and deny it in part.

Background

The RFP was issued on November 7, 1984, and contemplated the award of a cost-plus-fixed-fee contract for a 1-year period, with two 1-year options. Section "M" of the RFP provided that, for purposes of proposal evaluation, technical capability would be considered approximately three times as important as cost. Technical Capability was stated to be comprised of four subfactors: Technical Comprehension; Prior Experience and Accomplishments; Personnel Capabilities; and Management Organization and Plan. Section "M" stated that the first three technical subfactors were of approximately equal importance, and that each was approximately four times as important as Management Organization and Plan.

Section "M" also provided that cost, although not as important as technical capability, was still an important factor and should not be ignored, and that the degree of its importance would increase with the degree of technical equality of submitted proposals. Cost was to be evaluated on the basis of cost realism, and, with regard to any

understated costs, the Navy stated that it reserved the right to evaluate cost proposals based on the inclusion of all necessary and verifiable items of cost. Finally, section "M" provided that award would be made to the offeror whose proposal offered the greatest value in terms of both technical and cost considerations rather than the proposal offering the lowest cost.

The Navy received offers from NSSI, Stanwick, and Syscon Corporation by the January 21, 1985, closing date. The results of the Navy's initial evaluation of technical proposals were as follows:

	<u>NSSI</u>	<u>Stanwick</u>	<u>Syscon</u>
Technical Comprehension (25 points)	21.25	23.55	20.25
Prior Experience (25 points)	20.00	23.90	18.50
Personnel Capabilities (20 points)	18.00	19.40	15.80
Management/Organization (5 points)	<u>3.75</u>	<u>4.67</u>	<u>4.20</u>
Total	62.73	71.16	58.75 ^{1/}

After the initial evaluation of technical proposals, the contracting officer determined that NSSI's and Stanwick's proposals were acceptable and that Syscon's proposal was technically unacceptable, but capable of being made acceptable through discussions. Accordingly, the contracting officer asked each firm to address certain areas of deficiency noted in its proposal and requested revised technical and cost^{2/} proposals. NSSI was specifically asked for more information as to its corporate experience, other than that of the individual employees the firm anticipated hiring for certain task areas, and also for more information as to the firm's understanding of the relationships among the various Navy activities involved in the acquisition.

The Navy received revised proposals from all three offerors. Syscon's revised proposal was deemed to be

^{1/}The totals, as taken from the Navy's administrative report, are incorrect for NSSI and Stanwick and should properly be 63.00 and 71.22, respectively.

^{2/}According to the Navy, revised cost proposals were requested because, even though the cost proposals had not yet been evaluated for cost realism, the offerors' costs might have changed.

unacceptable and incapable of being made acceptable because the firm had been unable to correct the deficiencies noted as the result of the Navy's initial evaluation. Stanwick's revised proposal received slightly higher scores than its initial proposal for the Technical Comprehension and Management Organization evaluation subfactors and a slightly lower score for the Personnel Capabilities subfactor. Its score for Prior Experience did not change. Stanwick's total normalized technical score was 75.^{3/}

NSSI's revised proposal was downgraded in three technical evaluation subfactor areas. NSSI's score for Technical Comprehension was reduced slightly from 21.25 to 21.00 because the firm's revised proposal continued to indicate that it lacked an understanding of the relationships among the Navy activities involved in the acquisition. The firm's score for Personnel Capabilities was reduced slightly from 18.00 to 17.60 because NSSI indicated in its revised proposal that certain personnel (other than those proposed to be hired from Stanwick) had no direct experience with the E-2C and C-2 aircraft, although experientially strong in other related areas. Further, NSSI's score for Prior Experience was reduced from 20.00 to 18.75 because NSSI had not provided the information as to its corporate experience requested by the contracting officer, but rather had indicated that it had no direct experience with E-2C and C-2 aircraft other than that which it would gain from its proposed personnel. As a result, NSSI received a total normalized technical score of 65.

Upon completion of the technical evaluation, the Navy, in conjunction with the Defense Contract Audit Agency (DCAA), evaluated NSSI's and Stanwick's cost proposals for cost realism. The Navy determined that Stanwick had proposed in accordance with the labor categories and labor hours estimated in section B9 of the

^{3/}According to the Navy's administrative report, the scores for NSSI and Stanwick were normalized by using a predetermined formula.

solicitation^{4/}, and DCAA found that Stanwick's general and administrative (G&A) costs and overhead were in accordance with DCAA's recommended rates. Therefore, Stanwick's cost proposal was not adjusted for cost realism.

However, NSSI did not propose in accordance with section B9's estimates, and the Navy determined that NSSI's proposal understated the labor hours necessary for the work. NSSI proposed a total of 8,910 man-hours for the program manager, senior engineer, engineer, and reproduction typist labor categories for the contract's first year, and 12,340 total man-hours for these labor categories in the option years, whereas section B9 had estimated that the necessary level of effort would be, respectively, 13,930 and 16,150 man-hours. The Navy was especially concerned that NSSI had only proposed 60 man-hours for the program manager in both the first year and option years, while section B9 had estimated that 550 and 650 man-hours, respectively, would be the necessary level of effort for this labor category.

Accordingly, the Navy recommended that NSSI's proposed labor hours be adjusted to reflect those estimated in section B9. Furthermore, DCAA concluded that NSSI's proposed G&A and overhead rates were too low because NSSI was a new firm and had no incurred cost experience and no current workload. Therefore, DCAA recommended that NSSI's G&A and overhead costs be upwardly adjusted to reflect DCAA's recommended rates. The results of the cost realism analysis were as follows:

^{4/}Section B9 provided the estimated level of effort for the contract's first year of performance and for the two option years, based upon both historical usage and the government's projections for the requirement. Offerors were informed that they could propose in accordance with section B9's stated labor mix and man-hours, or that they could propose on an alternative basis as reflected in their technical proposals.

	<u>Offered Cost</u>	<u>Adjusted Cost</u>	<u>Normalized Cost Score^{5/}</u>
NSSI	\$1,279,387	\$1,735,225	25
Stanwick	\$2,131,015	\$2,131,015	19

The Navy then requested the two firms to submit best and final offers. According to the Navy's report, NSSI was advised that its proposed level of effort was unacceptable, and that the firm should revise its cost proposal in accordance with section B9's man-hour estimates. The Navy states that NSSI was further advised to propose G&A and overhead rates in accordance with DCAA's recommended rates as provided to the firm.

Stanwick did not revise either its technical or cost proposal. NSSI revised its best and final cost proposal to reflect the labor hour estimates in the RFP, but the firm did not revise its G&A and overhead rates. Accordingly, NSSI's best and final cost was adjusted to reflect DCAA's recommended rates:

	<u>Best and Final Offer</u>	<u>Adjusted Cost</u>	<u>Normalized Cost Score</u>
NSSI	\$1,791,840	\$1,839,180	25
Stanwick	\$2,131,015	\$2,131,015	21

The final result of the Navy's evaluation was as follows:

	<u>Normalized Tech. Score</u>	<u>Normalized Cost Score</u>	<u>Total Normalized Score</u>
NSSI	65	25	90
Stanwick	75	21	96

On the basis of the final scores, and because technical capability was deemed to be three times as important as cost, the Navy determined that an award to Stanwick would be in the government's best interest.

^{5/}Since NSSI's cost as adjusted for cost realism was low, the firm received the maximum number of possible points for the cost evaluation factor, and Stanwick hence received a lower number of points in direct proportion to the percentage by which its offered cost exceeded NSSI's.

Analysis

(1) Procedural Defects

The Navy urges that we should dismiss the protest because NSSI has not furnished to the Navy certain enclosures to its original protest submission that were provided to this Office. The enclosures in question are copies of NSSI correspondence and copies of the firm's papers and notes from the debriefing. The Navy refers to our Bid Protest Regulations at 4 C.F.R. §§ 21.1(d) and (f) (1985), which specifically provide that the protester shall furnish a copy of the protest, including relevant documents not issued by the contracting agency, to the contracting agency not later than 1 day after the protest is filed with this Office, and that failure to comply with these requirements may cause the protest to be dismissed. The Navy asserts that the enclosures are clearly relevant to the issues raised in NSSI's protest, and that the firm's failure to furnish them has compromised the agency's ability to provide this Office with a complete and responsive administrative report.

Our Bid Protest Regulations are intended to provide effective and equitable procedures so that all parties have an opportunity to present their cases and so that protests can be resolved within the strict timeframes mandated by the Competition in Contracting Act of 1984, Pub. L. No. 98-369, 98 Stat. 1175, 1199. C-RAN Corp., B-218553.2, May 14, 1985, 85-1 CPD ¶ 543. Therefore, we will generally dismiss a protest where the protester fails to file a copy of the protest with the contracting agency within 1 day after the protest has been filed with this Office; otherwise, any delay in furnishing the copy of the protest necessarily delays all subsequent protest proceedings and frustrates our effort to consider all objections to agency procurement actions in a timely manner. Brunk Tool & Die Co., B-218154.2, Mar. 6, 1985, 64 Comp. Gen. ____, 85-1 CPD ¶ 282.

We do not believe that NSSI's failure to furnish the Navy with copies of the NSSI correspondence is critical, since NSSI explicitly identified that correspondence in its protest as part of its response to the Navy's request for a best and final offer, and we assume the Navy already had this information in its

possession. However, we agree that NSSI's failure to furnish copies of its papers and notes from the debriefing was a serious omission which contravenes the requirement that a complete copy of the protest be provided to the agency. See 4 C.F.R. § 21.1(d), *supra*. Under the circumstances present here, we nonetheless decline to dismiss the protest for that reason. First, the Navy did not apprise us of NSSI's failure to submit the debriefing material until we received the agency's report more than a month after the protest was originally filed with this Office. Second, the Navy's administrative report appears to be both factually and legally sufficient, so we cannot conclude that lack of knowledge of the content of the material significantly affected the Navy's ability to respond to the protest. Despite this, because we believe that it would be improper to base our decision upon protest documentation not provided to the agency, we have not considered the information contained in the firm's papers and notes during our resolution of the protest.

(2) Untimely Issues

The Navy questions the timeliness of NSSI's allegations that: the Navy failed to consider the experience of NSSI's proposed technical and management personnel under the Prior Experience and Accomplishments technical evaluation subfactor; the technical evaluation subfactors should have been further divided into key elements; the Navy improperly failed to establish cost subfactors and to conduct a "should-cost" analysis; and the Navy should have considered NSSI's status as a small business concern during the evaluation.

We agree with the Navy that, to the extent NSSI alleges that the technical evaluation subfactors should have been further divided into key elements for evaluation purposes, and that the Navy improperly failed to establish cost evaluation subfactors, the issues are untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1), provide that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the time set for closing in order to be considered. In this matter, it was clear from the face of the RFP that no such breakdowns were contemplated. Therefore, any basis for protest in this regard should have been apparent to NSSI prior to the proposal closing date and should have been filed prior to that point. In any event, it is up to the

agency to determine the extent to which it will use subcriteria to evaluate proposals against a stated RFP criterion, and the fact that a different evaluation approach would be more advantageous to an offeror provides no valid basis for protest. See AAA Engineering & Drafting, Inc., B-204664, Apr. 27, 1982, 82-1 CPD ¶ 387.

In addition, no mention is made in the RFP of a "should-cost" analysis, which is a specialized form of cost analysis conducted at the contractor's plant that identifies and challenges inefficiencies in the contractor's management and operations. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.810 (1984). The FAR specifically states that when a "should-cost" analysis is planned, the solicitation should so indicate. *Id.* Hence, it should have been apparent from the solicitation that such an analysis would not be performed, and NSSI was required to protest this issue as an alleged solicitation defect prior to the January 21, 1985, closing date. Since the firm did not do so, this issue is untimely and will not be considered. CBM Electronic Systems, Inc., B-215679, Jan. 2, 1985, 85-1 CPD ¶ 7.

However, we do not believe that the other issues which the Navy asserts to be untimely should be dismissed, since, in our view, they are not challenges to the solicitation's evaluation criteria *per se*, but rather concern the propriety of the Navy's application of those criteria during the proposal evaluation process.

(3) Alleged Evaluation Improprieties

In reviewing protests of allegedly improper evaluations, this Office will not substitute its judgment for that of the agency's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria and whether there were any violations of procurement statutes and regulations. ATI Industries, B-215933, Nov. 19, 1984, 84-2 CPD ¶ 540. The protester's mere disagreement with the results of the evaluation does not meet its burden of proving that the evaluation was itself unreasonable. A.B. Dick Co., B-207194.2, Nov. 29, 1982, 82-2 CPD ¶ 478.

We find no merit in NSSI's allegation that the Navy failed to consider the experience of NSSI's proposed technical and management personnel under the Prior

Experience and Accomplishments technical evaluation subfactor. As the Navy points out, the RFP provided under the Prior Experience and Accomplishments technical evaluation subfactor that the Navy would evaluate offerors' "demonstrated capability as it relates to the E-2C, C-2A . . . and similar programs." The RFP also provided under the Personnel Capabilities evaluation subfactor that the qualifications of offerors' personnel would be evaluated "as they relate to E-2C, C-2A . . . or other similar programs." Therefore, it is clear that the Navy was evaluating the experience of offerors as corporate entities separately from the experience of their proposed personnel. The record shows that NSSI's proposal was evaluated in both regards, and the experience of its proposed technical and management personnel was fully considered under the Personnel Capabilities evaluation subfactor. This experience was properly not considered under the Prior Experience subfactor because that criterion covered only corporate experience and did not encompass personnel experience. Moreover, to the extent NSSI may have believed that the Prior Experience subfactor was unduly restrictive of competition because only Stanwick had direct corporate experience with E-2C and C-2A aircraft, the firm should have protested the issue as an alleged solicitation impropriety prior to the January 21, 1985, closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1), supra.

We find no merit in NSSI's allegation that the Navy acted improperly by not affording the firm consideration because of its status as a small business concern during the evaluation of proposals. Where a procurement has not been set aside for small businesses and the solicitation does not provide for special consideration of small business firms, the agency has no legal basis for giving preferential treatment to small business firms in the selection process. Polaroid Corp., B-209753.3, Oct. 4, 1983, 83-2 CPD ¶ 414.

We find no merit to NSSI's allegation that the Navy improperly placed an undue emphasis upon technical capability at the expense of cost considerations in selecting Stanwick for the award. The RFP clearly provided that an offeror's technical capability was three times as important an evaluation factor as proposed cost, and our review of the record shows that the Navy's evaluators reasonably concluded that Stanwick's proposal was technically superior.

To the extent NSSI believes that it should have received the award because its proposal was technically acceptable and offered the lowest cost, it is well settled that, in a negotiated procurement, award need not be made to the low offeror unless the RFP so indicates. Price Waterhouse & Co., B-203642, Feb. 8, 1982, 82-1 CPD ¶ 103. Otherwise, cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation criteria. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

Here, NSSI's technical proposal was evaluated as inferior to Stanwick's by a considerable degree and even though NSSI may have proposed the lowest cost, the Navy reasonably determined that its offer was not most advantageous to the government given the importance of technical capability in relation to cost. Accordingly, we will not object to the Navy's award of the contract to Stanwick as the higher cost, but technically superior, offeror. See ATI Industries, B-215933, supra.

NSSI also alleges that the Navy violated FAR, § 15.802, by including only technical personnel in the technical evaluation panel and not specialists from other areas of contract administration as well. The firm apparently believes that this resulted in an improper decision to base the contract award on technical considerations rather than cost.

NSSI references an inapplicable provision of the FAR since section 15.802 does not relate to proposal evaluation, but instead concerns the submission of certified cost or pricing data by a contractor pursuant to the Truth in Negotiations Act, 10 U.S.C. § 2306(f) (1982). If NSSI actually means to refer to FAR, § 15.805, which essentially provides that the contracting officer shall, as appropriate, rely upon a team of various experts when conducting an analysis of cost or pricing data, we do not see how this provision concerns the composition of the Navy's technical evaluation panel. To the extent NSSI may be implying that offered costs were not properly evaluated by appropriate specialists during the source selection process, this, in fact, is not the case, as we discuss more fully below.

We find no merit in NSSI's allegation that the Navy improperly evaluated its cost proposal. Rather, it is apparent that NSSI has misunderstood the nature and effect of the cost realism analysis which was performed by the Navy in conjunction with DCAA.

FAR, § 15.605(d), recognizes that, in awarding a cost-reimbursement-type contract, an offeror's proposed costs should not be controlling. Therefore, evaluated costs rather than proposed costs provide a sounder basis for determining the most advantageous proposal to the government, Teledyne Ryan Aeronautical, 56 Comp. Gen. 635 (1977), 77-1 CPD ¶ 352, and contracting agencies must perform a cost realism analysis before awarding a cost-type contract. Dynamic Science, Inc., B-214111, Oct. 12, 1984, 84-2 CPD ¶ 402. Because the agency clearly is in the best position to make determinations as to the realism of proposed costs, we will not question those determinations unless they are shown to be unreasonable. Management Services, Inc., B-206364, Aug. 23, 1982, 82-2 CPD ¶ 164.

Here, the Navy determined that NSSI's initial cost proposal was unrealistic because it understated the number of labor hours necessary to perform the contract. Accordingly, the Navy determined that NSSI's initial cost proposal should be upwardly adjusted for evaluation purposes to reflect the realistic labor costs necessary to perform the work called for under the solicitation. Contrary to NSSI's assertion, the record establishes that the Navy did not then direct the firm to increase its offered cost, but rather advised NSSI that its level of effort was unacceptable and that it should consider the submission of a best and final offer which reflected the RFP's estimated level of effort.

Although NSSI's best and final cost proposal conformed to the Navy's estimated level of effort, NSSI now asserts that its estimated labor hours were not a proper element of cost realism and disagrees with the agency's conclusion that the proposed labor hours were inadequate. We find no merit to the protester's position since we think it is apparent that a cost proposal is unrealistic if it does not include the costs necessary to provide a level of effort that is adequate to perform the contract. Moreover, we find no basis to question the agency's conclusion that NSSI's proposed level of effort was inadequate since this conclusion was based primarily

on the fact that NSSI proposed only 60 man-hours for its program manager, which represent only about 10 percent of the Navy's estimated level of effort for that labor category.

We also find nothing in the record to support NSSI's contention that DCAA did not question the firm's costs. Instead, the source selection documents establish that although DCAA verified NSSI's labor rates and labor escalation factors as reasonable, DCAA determined that NSSI's G&A and overhead costs were too low and recommended that they be upwardly adjusted for evaluation purposes.

Moreover, we note that the cost realism analysis performed here clearly had little adverse impact upon NSSI's competitive position in any event. Despite the fact that its proposed costs were adjusted for cost realism purposes, its best and final offer was still low and, therefore, received the maximum possible number of points under the cost evaluation criterion.

NSSI also alleges that, after reviewing Stanwick's proposal, the Navy improperly reevaluated NSSI's proposal on several occasions, with the result that NSSI's favorable initial scores were downgraded. We believe that NSSI has simply misunderstood the nature of the competitive negotiation process.

Here, the three technical proposals were initially evaluated by the Navy's technical evaluation panel using the four stated technical subfactors contained in the RFP. As required by FAR, § 15.610(b), the Navy then conducted discussions by advising offerors of the deficiencies perceived by the evaluators and by affording the offerors the opportunity to correct those deficiencies by submitting revised proposals.

With respect to NSSI's initial proposal, perceived deficiencies noted by the evaluators were the firm's apparent lack of direct corporate experience with the E-2C and C-2 aircraft and its apparent lack of an understanding of the relationships among the various Navy activities involved in the acquisition. NSSI's revised proposal was downgraded slightly from the rating received during the initial evaluation because the firm did not satisfy the evaluators' concerns and not because its proposal was

improperly evaluated relative to Stanwick's proposal.^{6/} Nothing in the record supports NSSI's apparent belief that its proposal was improperly reevaluated and downgraded on several occasions, or that the agency's evaluation was based on anything other than the evaluation factors established in the RFP. Accordingly, NSSI's allegation on this issue is without foundation.

NSSI alleges that Stanwick proposed additional subcontractor personnel based upon the firm's superior knowledge of additional tasks not addressed in the solicitation. The Navy responds that Stanwick did not propose additional personnel to handle additional unaddressed tasks, but rather proposed more personnel than NSSI to accomplish those tasks clearly stated in the RFP. According to the Navy, although the two firms proposed the same number of labor hours, Stanwick proposed more personnel, each working less hours. The evaluators apparently concluded that Stanwick's approach would prove to be more advantageous, and NSSI has not shown that such a conclusion was unreasonable. Moreover, an offeror's competitive advantage due to its superior knowledge as the incumbent need not be equalized in favor of the other offerors. Fox & Co., B-197272, Nov. 6, 1980, 80-2 CPD ¶ 340.

In addition, apart from inconsequential errors made by the Navy in totaling the technical scores, we find no credence in NSSI's allegation that the Navy made numerous mathematical errors during the scoring of proposals. In that regard, the protester is mistaken in asserting that Stanwick improperly received 23.90 points for the Prior Experience and Accomplishments technical subfactor. This allegation stems from NSSI's belief that the subfactor was worth only 20 points. From the record, it appears that there was a degree of confusion on this issue generated during the debriefing; nevertheless, it is clear that this subfactor actually was worth a possible maximum of 25 points.

NSSI also alleges that the Navy improperly failed to inform NSSI during discussions of a deficiency in its proposal relative to the Personnel Capabilities technical

^{6/}NSSI's technical proposal only lost a total of 1.42 evaluation points between the first and second evaluations.

evaluation subfactor. Specifically, NSSI alleges that its proposal was downgraded because it submitted a matrix of personnel experience rather than the detailed resumes of its proposed personnel. We find no merit to NSSI's contention since this weakness in the proposal was only minor in nature. A contracting agency is not required to discuss all inferior or inadequate aspects of a proposal which is found to be technically acceptable. Dynalectron Corp.--PacOrd, Inc., B-217472, Mar. 18, 1985, 85-1 CPD ¶ 321.

Furthermore, it is clear that this weakness had only a negligible effect, if any, on the scoring, since the primary reason that NSSI's score for the Personnel Capabilities subfactor was downgraded was because it became clear to the Navy that NSSI's proposed staff, other than those to be hired from Stanwick, had no direct experience with the E-2C and C-2 aircraft. In this connection, NSSI is incorrect in asserting that the Navy improperly failed to give NSSI the same number of points as Stanwick for Personnel Capabilities where both firms were proposing the same personnel. Although NSSI did propose personnel who were also on Stanwick's proposed staff, NSSI proposed additional personnel as well, and they lacked direct experience with the E-2C and C-2 aircraft.

We will not consider NSSI's allegation that the Navy ignored Stanwick's default of a prior contract in finding the firm to be responsible to receive the award. This Office does not review affirmative responsibility determinations absent a showing of possible fraud or bad faith on the agency's part or an allegation that definitive responsibility criteria contained in the solicitation were misapplied. James M. Smith, Inc., B-213063, Oct. 12, 1983, 83-2 CPD ¶ 459. Those limited exceptions to allow for our review are not present here, and, in any event, prior default terminations do not necessarily require rejection of a firm as nonresponsible. S.A.F.E. Export Corp.--Request for Reconsideration, B-208744.2, July 14, 1983, 83-2 CPD ¶ 90.7/

We also will not consider NSSI's allegation that the contracting activity does not have a proper small business

^{7/} We note that Stanwick disputes NSSI's assertion that Stanwick was found in default of a prior contract, and we make no finding in that regard.

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program as required by FAR, § 19.201. Our Office considers protests involving specific procurement actions only, i.e., whether an award or proposed award of a contract complies with statutory, regulatory and other legal requirements. Mil-Craft Mfg., Inc., B-214015, May 7, 1984, 84-1 CPD ¶ 512. A general allegation that the agency's small business program is inadequate is not an appropriate matter for our review as it does not concern specific procurement actions.

The protest is dismissed in part and denied in part.

for Seymour Efron
Harry R. Van Cleave
General Counsel