



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Automation Management Corp.  
File: B-224924  
Date: January 15, 1987

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### DIGEST

1. Protest that delivery orders are outside the scope of a contract is untimely where protester waited until after the first year of contract performance was complete before seeking the information on which its protest is based.
2. Protester has not met its burden of affirmatively proving its case where it does not rebut the agency's specific responses to the protester's general allegations that certain delivery orders are outside the scope of the protested contract.
3. Protest that agency improperly exercised an option to extend the term of a contract is denied where the protester has not shown that the agency failed to follow applicable regulations or that the agency's determination to exercise the option was unreasonable.
4. Firm that did not submit an offer in response to the solicitation is not an interested party to protest the evaluation of the awardee's cost proposal.

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### DECISION

Automation Management Corporation (AMC) protests that certain delivery orders issued by the Naval Ocean Systems Center under contract No. N66001-85-D-0204 are outside the scope of the contract and therefore improper. In addition, AMC asserts that the agency's evaluation of the awardee's cost proposal was defective and that the agency improperly exercised an option to extend the contract for an additional year. We deny the protest in part and dismiss it in part.

### BACKGROUND

The contract is for an independent verification and validation (IV&V) program on the design and development (by another contractor) of the Advanced Combat Direction System.

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Essentially, the IV&V contractor's function is to independently monitor and assess the design and development contractor's product and performance. The objective of the IV&V program is to provide early error detection and correction in the system design and development.

The IV&V contract was awarded to American Defense Systems, Inc. (ADSI) on June 12, 1985, for 1 year, with three 1-year renewal options. The agency exercised the first of these options on June 12, 1986.

On July 2, 1986, AMC, which had not responded to the solicitation originally, filed a Freedom of Information Act (FOIA) request with the Navy, asking for copies of the contract and delivery orders. It subsequently filed a second FOIA request, and on September 11, 1986, received a written response from the Navy to that request. Based on this information, AMC filed a protest with the Navy raising the same issues as it now raises here. The Navy responded to AMC's protest by letter of September 24, 1986, and found both that the protest was untimely under this Office's Bid Protest Regulations, 4 C.F.R. Pt. 21 (1986), and that AMC's allegations were without merit. AMC filed its protest with our Office on October 7.

#### SCOPE OF CONTRACT/CONFLICT OF INTEREST

AMC alleges that several delivery orders issued to ADSI are outside the scope of its contract. AMC notes that the statement of work (SOW) attached to the solicitation and contract states:

"The Contractor, as the government's designated IV&V agent, shall provide engineering support to verify requirements, determine functional/performance correctness and traceability, evaluate design alternatives, conduct necessary system and software analyses, develop supporting system models, and software tools, conduct validation of system and software engineering products, develop test documentation, and support testing. Excluded from this contract shall be the fabrication of any hardware or the production of tactical application computer programs." (emphasis added).

AMC also notes that the solicitation contains an organizational conflict of interest provision that prohibits the contractor from involvement in "specification or computer program development for CV block 0 or CG/CV Block 1 Combat Direct System (CDS) or Command Control Process (C<sup>2</sup>P)" for the

duration of the contract. AMC contends that the delivery orders in question are outside the scope of the contract and contrary to the conflict of interest provision. AMC also asserts that the reason it did not respond to the solicitation for the IV&V contract was the restrictive nature of the conflict of interest provision, which would have excluded it from significant business opportunities for a 4-year period.

The Navy argues that we should dismiss the issue as untimely because AMC admits that it knew the contract had been awarded in July 1985 but, nevertheless, waited for more than a year before it requested copies of the delivery orders. The general rule is that a protest based on information received pursuant to FOIA will be considered timely if filed within 10 working days after receipt of the information, provided that the protester diligently pursued the release of the information under FOIA. See Marathon LeTourneau Co.--Reconsideration, B-221234.2, Jan. 9, 1986, 86-1 CPD ¶ 24. The Navy concedes that AMC filed its protest within 10 working days after receipt of the delivery orders under FOIA, but contends that AMC did not diligently pursue this information.

AMC offers no explanation for its failure to file a FOIA request for the delivery orders until after the first year of contract performance was complete. Absent any such explanation, we agree with the Navy that the protester did not diligently pursue the information on which its protest is based. See M. Dyer & Sons, Inc.--Request for Reconsideration, B-222648.2, Aug. 18, 1986, 86-2 CPD ¶ 198; Electro-Methods, Inc., B-218180, Mar. 4, 1985, 85-1 CPD ¶ 272, aff'd, B-218180.2, Apr. 17, 1985, 85-1 CPD ¶ 438. Since the protester admits that it was aware of the scope of work under the contract and knew that an award had been made, we do not think it was entitled to wait until after contract performance was complete before it made any effort to acquire the information necessary to determine whether a basis for protest existed. See Policy Research, Inc., B-200386, Mar. 5, 1981, 81-1 CPD ¶ 172. We therefore consider this issue to be untimely.

Furthermore, even if we were to consider the matter on its merits, we would deny AMC's protest because the protester has failed to meet its burden of proving its case. In its original protest, AMC simply cited several delivery orders and alleged that they involved "various development activities" such as "requirements allocation, network (PERT) analysis, risk assessment and management activities . . . ." AMC also alleged that certain other delivery orders involved

computer program development. The protester provided no further explanation for its opinion that these delivery orders are outside the scope of the protested contract. Nor did AMC's comments on the agency report on its protest provide any further detail in this regard. Rather, the protester simply alleged that the agency report contains blatantly false information and asserted that an investigation would substantiate this.

In contrast, the agency report specifically addresses each delivery order cited by AMC and explains why the agency considers the order to be within the scope of the contract. For example, the agency admits that one of the protested delivery orders required ADSI to develop a risk management plan for the combat direction system tactical software program, which is being developed by another contractor. The agency contends, however, that this clearly does not involve the development of tactical application computer programs by ADSI (a task that is excluded from ADSI's contract) but instead simply requires ADSI to assess the risk associated with the programs developed by the software development contractor. The agency asserts that this is precisely the type of work that ADSI's contract requires.

A protester bears the burden of submitting sufficient evidence to prove its case, and this burden is not met where the only evidence is the protester's self-serving statements that conflict with the agency's report. Sun Enterprises, B-221438.2, Apr. 18, 1986, 86-1 CPD ¶ 384. Since AMC merely alleges that the protested delivery orders were outside the scope of the contract and has not specifically rebutted the agency's reasons for concluding that the orders are within the contract's scope, the protester has failed to meet its burden of proof. Although the protester suggests that this Office should investigate the protest allegations, we do not conduct investigations for the purpose of establishing the validity of a protester's assertions. Alan Scott Industries, B-219096, June 20, 1985, 85-1 CPD ¶ 706. Rather the protester has the burden of proof, and AMC clearly has not met that burden here.

#### OPTION EXERCISE

AMC also alleges that the Navy improperly exercised the first contract option to extend performance for another year. The protester contends that the agency did not perform a proper cost analysis before exercising the option.

The Navy states that it performed a complete cost analysis at the time of contract award, when the options were evaluated. The Navy notes that ADSI's price for the first option year

was less than its price for the base year, and that the rates proposed were well within those recommended by the Defense Contract Audit Administration (DCAA). The Navy also asserts that the contracting officer made a reasoned determination that exercising the option was the most advantageous method of fulfilling the government's needs. See Federal Acquisition Regulation (FAR), 41 C.F.R. § 17.207 (FAC 84-13, Feb. 3, 1986). The agency therefore argues that there is no merit to the protester's position.

Our review of the record, which contains the DCAA report and the contracting officer's memorandum justifying the option exercise, discloses no basis to question the propriety of the option exercise here. Further, the protester has provided no rebuttal to the agency's position on this issue. We will not question the exercise of a contract option unless the protester shows that applicable regulations were not followed or that the agency's determination to exercise the option was unreasonable. See Astronautics Corp., B-222414.2 et al., Aug. 5, 1986, 86-2 CPD ¶ 147. AMC has made no such showing. We therefore deny this aspect of its protest.

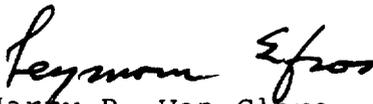
#### COST EVALUATION

The protester contends that the agency did not conduct a proper evaluation of ADSI's cost proposal at the time of contract award. Specifically, the protester asserts that the Navy did not comply with FAR, 41 C.F.R. § 15.805-3 (1985) "Cost analysis" and 41 C.F.R. § 5.805-5 (1985) "Field price support."

We dismiss this aspect of the protest because we find that AMC is not an interested party under our Bid Protest Regulations. See 4 C.F.R. § 21.0 (1986). AMC did not submit an offer in response to the solicitation for the protested contract. The agency did, however, receive one other acceptable offer in addition to ADSI's offer. AMC therefore does not have the direct economic interest that is necessary to make it an interested party under our regulations. See Tate Engineering, Inc., B-213854, Mar. 26, 1984, 84-1 CPD ¶ 350. Rather, the direct economic interest at stake here is that of the other offeror who participated in the procurement but did not receive the contract award. Id. Accordingly, we will not consider this aspect of AMC's protest.

#### CONCLUSION

The protest is dismissed in part and denied in part.

*for*   
Harry R. Van Cleve  
General Counsel