The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fischer Marine Repair Corporation

File: B-228297

Date: November 20, 1987

DIGEST

Although request for proposals (RFP) for ship repair work was defective for failure to specify which of two types of master repair agreement offerors were required to hold to be eligible for award, protester, which does not hold the type of master agreement actually required, is not entitled to recover its proposal preparation or protest costs since, although defect in RFP should have been apparent to protester, protester chose to submit its proposal without attempting to clarify defective provision with contracting agency before proposals were due.

DECISION

Fischer Marine Repair Corporation protests the award of a contract to any other offeror under request for proposals (RFP) No. N62794-87-R-0018, issued by the Navy for repair work on the USS Nitro. We deny the protest and claim for costs.

The work called for by the RFP is designated a "selected restricted availability" (SRA) and involves extensive repairs and alterations on the USS Nitro, a 10,000-ton ammunition ship. According to the Navy, in order to be eligible to perform repair work of any kind on Navy ships a prospective contractor must enter into an advance agreement with the Navy, called a Master Agreement for Repair and Alteration of Vessels (MARAV), setting out certain clauses and conditions applicable to ship repair contracts. There are two types of MARAVs, a Master Ship Repair Agreement (MSRA) and an Agreement for Boat Repair (ABR), which differ according to the nature of the work the contractor is quali fied to perform. A contractor holding an MSRA is eligible to perform extensive and complex work, such as an SRA, on ships of 500 tons or larger. An ABR allows a contractor which lacks the capability to perform the more extensive work on larger vessels to compete for repair work on smalle vessels, and, where designated by the Navy, for work of

limited scope on the larger vessels. The different kinds of repair work for which each agreement is to be used are described in the standard MSRA and ABR themselves, as well as in Navy Instruction 4280.2A, a copy of which is provided to all Master Agreement holders.

In this case, while the Navy now states that it intended to limit the competition to MSRA holders in light of the extensive scope of work called for by the RFP and the type of vessel involved, the RFP failed to specify which type of Master Agreement was required. Instead, section L-46 provided as follows:

> "MASTER AGREEMENT FOR REPAIR AND ALTERATION OF VESSELS
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> In compliance with the above, the offeror offers, and agrees, if this offer is accepted within 31 calendar days from the date specified for receipt of proposals, to execute the current Master Agreement for Repair and Alteration of Vessels if not previously done, and adequate time exists to allow proper assessment of the contractor's Master Agreement application, without impacting the vessel's availability dates; and to perform a job order issued by the Contracting Officer under the Master Agreement, incorporating the requirements stated in the Schedule, at the prices offered."

Two firms, Fischer and General Marine Diesel Company, submitted proposals by the August 17, 1987 due date. Fischer offered the lower evaluated price and was in line for award. The Navy rejected its proposal, however, because Fischer currently holds only an ABR, not an MSRA. (Fischer previously held an MSRA, but it was revoked by the Navy in February 1987.) The Navy then made award to General Marine on September 15; the protest was filed on September 25. The Navy subsequently authorized General Marine to continue performance under the contract notwithstanding the protest, based on its determination under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(2)(A)(ii) (Supp. III 1985), that urgent and compelling circumstances significantly affecting the interests of the United States would not permit delaying performance pending a decision on the protest.

Fischer challenges the Navy's rejection of its proposal for lack of an MSRA, arguing that it reasonably interpreted the RFP to allow holders of either type of Master Agreement to compete and thus that, as an ABR holder and the lowest priced offeror, it was entitled to award.

The Navy determined that the competition should be limited to MSRA holders based on the nature of the work called for by the RFP, and Fischer does not challenge the Navy's authority to do so where necessary to meet its needs. As a result, even assuming the protest were found to have merit, there would be no basis to recommend that award be made to Fischer, which lacks an MSRA; at most, Fischer would be entitled to recover its proposal preparation and protest costs if we were to conclude that it was misled by the defect in the RFP into competing for an award for which it is ineligible. As discussed below, however, we find that Fischer is not entitled to recover its costs since it acted unreasonably in deciding to submit a proposal without attempting to resolve the apparent defect in the solicitation's Master Agreement provision.

As the Navy recognizes, the RFP was defective for failing to indicate which type of Master Agreement an offeror was required to hold to be eligible for award under the RFP. As an experienced ship repair contractor, however, Fischer should have recognized the defect, yet it made no effort to raise the issue with the Navy before proposals were due. Instead, Fischer chose to participate in the competition based on its own interpretation of the defective provision. Under such circumstances, a protester like Fischer is not entitled to relief when the contracting agency fails to act in accordance with the protester's interpretation of the defective provision. General Engineering and Machine Works, B-223929, Oct. 27, 1986, 86-2 CPD ¶ 477.

Fischer argues that the defect was not apparent on the face of the RFP since it was reasonable to assume, as Fischer did, that either type of Master Agreement would be acceptable. We find Fisher's argument unpersuasive. As noted above, the MSRA and the ABR differ according to the nature and scope of the work the holder is eligible to perform; an MSRA is required where the solicitation calls for a high level of management and technical expertise and the capability to perform more complex work on larger vessels. In this case, the record shows that in addition to its current ABR, Fischer previously held an MSRA until it was revoked in February 1987. Fischer therefore is familiar with the two types of Master Agreements and the conditions under which each is to be used. In view of the extensive scope of work under the RFP--122 work items involving all disciplines throughout a 10,000-ton ship--it was not reasonable for Fischer to assume without further inquiry that a holder of the more limited ABR would be eligible for award. See G.K.S., Inc., B-211429, July 19, 1983, 83-2 CPD ¶ 101.

Fischer also argues that it reasonably assumed that an ABR would be sufficient since under prior contracts it had

performed work like that called for under the RFP while holding only an ABR. Fischer has not provided any detailed information regarding its prior contracts, however. In addition, the Navy disputes Fischer's contention, stating that Fischer was never awarded any contracts of similar scope even while it held an MSRA, and, after its MSRA was revoked, Fischer has competed only for work of limited scope suitable for ABR holders. Fischer has not challenged the Navy's assertions in this regard. Accordingly, we find no evidence in the record to support Fischer's contention that prior awards of Navy contracts justified Fischer's assumption that ABR holders would be eligible for award under the current RFP.

Under these circumstances, we cannot conclude that it was principally the Navy's actions which led Fischer to compete for an award for which it was not eligible; rather, by assuming that the Navy would follow Fischer's interpretation of the Master Agreement provision, without attempting to clarify what it should have realized was a defect in the provision, Fischer significantly contributed to the problem.

Accordingly, we deny the protest and conclude that Fischer is not entitled to recover its proposal preparation or protest costs. General Engineering and Machine Works, B-223929, supra.

John Brosnan

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