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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Constantine N. Polites & Co.--Reconsideration
File: B-233935.4
Date: October 5, 1989

DIGEST

Protester is entitled to recover the costs of filing and pursuing its protest and request for reconsideration where the protester was improperly denied a fair opportunity to compete for award.

DECISION

Constantine N. Polites & Co. requests that we reconsider our decision, Constantine N. Polites & Co., B-233935.3, May 25, 1989, 89-1 CPD ¶ 506, in which we denied Polites's protest against the terms of request for proposals (RFP) No. N00181-89-R-0023, issued by the Norfolk Naval Shipyard for various scaffolding components including pipes and couplers.

We reverse our prior decision and sustain the protest.

In its initial protest, Polites, a supplier solely of couplers, argued, among other things, that the RFP was unduly restrictive of competition because it combined couplers and pipes into a single lot, thus limiting competition to offerors who are capable of supplying both the specified couplers and the required pipes. The agency advised our Office in its report that restricting competition in this manner was necessary to ensure the validity of tensile strength testing of these components required by the IFB and that, therefore, the requirement stated the contracting agency's minimum needs. We found that the agency's actions were reasonable and that the consolidated approach to portions of the solicitation was not objectionable notwithstanding the fact that it precluded Polites's participation in those portions of the procurement. We therefore denied the protest.

In its request for reconsideration, Polites argues that the requirement that the same contractor supply both couplers and pipes is unnecessary because the couplers and pipes will be used with existing shipyard stock from other suppliers

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and thus will not be used as an independent consolidated unit. In response to Polites's request for reconsideration, the agency reevaluated the need to test these scaffolding component parts as an independent assembled unit. Based upon this reevaluation, the shipyard now agrees that there is no need to test the components as a consolidated unit since the components will be used interchangeably with existing shipyard stock. The agency states that the testing of individual components with existing shipyard stock components is sufficient to meet agency needs.

Regarding the appropriate remedy, the agency states that because this is a requirements type contract with a performance period of May 2, 1989, through May 1, 1990, the cancellation and resolicitation of this requirement at this time would be highly disruptive to shipyard operations. The agency asserts that resolicitation would only result in a replacement contract of 3 to 6 months duration. The agency submits that the corrective action should be limited to future procurements of these items and asserts that it will solicit its future needs on a line item basis rather than on a lot basis as it did under the current IFB.

We agree with the agency that the current contract should not be terminated. Since it is clear that Polites would have been able to submit an offer for couplers had the Navy properly solicited the couplers as a separate line item, and was denied a fair opportunity to compete, we conclude that Polites is entitled to recover its costs of filing and pursuing the protest and request for reconsideration.
4 C.F.R. § 21.6(d).

The prior decision is reversed and the protest is sustained.

for 
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of the United States