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Ashen



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: MAR Incorporated--Reconsideration
File: B-242465.2
Date: September 30, 1991

Paul Shnitzer, Esq., Crowell & Moring, for the protester,
Lucie-Anne Dionne Thomas, Esq., Department of the Navy, for
the agency,
David A. Ashen, Esq., and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Request for reconsideration of decision denying protest that
awardee failed to meet solicitation experience requirement is
denied where protester fails to demonstrate any errors of
fact or law warranting reversal or modification of prior
decision.

DECISION

MAR Incorporated requests reconsideration of our decision in
MAR Incorporated, B-242465, May 6, 1991, 91-1 CPD ¶ 437,
wherein we denied its protest against the Department of the
Navy's award of a contract to Seaward Services, Inc. (SSI)
under request for proposals (RFP) No. N66604-90-R-7512, for
services in support of naval research and development.

We deny the request.

The solicitation requested proposals to operate and maintain
small craft in support of various research and development
efforts. The solicitation required under the heading
"CORPORATE EXPERIENCE" that technical proposals:

"[S]hall present the company's history and experi-
ence, with emphasis on the operation and maintenance
of the type vessels described in the Statement of
Work [SOW] and navigation skills in the waters
described in the [SOW]. The offeror must demon-
strate that he has operated and maintained craft
similar to those described in the SOW for a minimum

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period of three (3) years and must describe corporate experience which demonstrates knowledge and capability to perform the tasks described in the SOW."

In response to inquiries from prospective offerors, the RFP was amended to define the phrase "craft similar to" as meaning "craft that have similar horsepower, overall length and operational characteristics."

In its protest, MAR principally argued that the agency improperly determined that SSI's proposal satisfied the above corporate experience provisions. MAR maintained that SSI's proposed vessels were not sufficiently similar to those operated under this contract, that SSI had not operated each of them for 3 years, and that they had not been operated in the same waters described in the RFP. We denied the protest, concluding that the agency reasonably had found that the vessels were sufficiently similar to the vessels under the contract, and that SSI satisfied the 3-year operation requirement, which we read as calling for cumulative operating experience totaling at least 3 years for all vessels combined, not for each vessel.

With respect to SSI's experience in operating craft "similar to" those listed in the RFP and in the same general waters, the agency gave particular weight to the fact that SSI had operated and maintained the research and support vessel Seaward Explorer since 1981. The Seaward Explorer, at 105 feet in length, was similar in size to two of the four contract vessels--the TR-711 (102 feet) and TWR-841 (120 feet), and the evaluators concluded that SSI's operation of a ship of the size, power, and operation characteristics of the Explorer for more than 3 years in waters in the area between New England, Florida, and the Bahamas indicated that SSI could manage, operate, and maintain the full range of vessels described in the RFP. The evaluators also found that two other craft specified in SSI's proposal were similar to the remaining two vessels designated in the SOW: the SSI-operated research vessel Simons (122 feet) was found comparable to the Navy's YFRT-287 (136 feet), and SSI's Lake Guardian (180 feet) was determined to be comparable to the Navy's Ranger (192 feet). (The Simons, at 122 feet, also was found similar to the TWR-841, referred to above, at 120 feet).

MAR primarily requests reconsideration on the basis that our decision failed to apply the proper definition of "craft similar to," described in the amendment as "craft that have similar horsepower, overall length and operational characteristics." MAR maintains that this requirement called for craft similar to each of the contract vessels in both horsepower and length, rather than craft similar only in one or the

other characteristic. It notes in this regard that although SSI's Seaward Explorer (105 feet) and Simons (122 feet) are somewhat similar in length to the Navy's TR-711 (102 feet) and TWR-841 (120 feet), the horsepower of SSI's vessels--910 horsepower for the Seaward Explorer and 920 horsepower for the Simon--is less than half of the horsepower for the otherwise comparable Navy vessels--2,000 horsepower for the TR-711 and 2,350 horsepower for the TWR-841.

This is essentially a continuation of MAR's argument from its protest; it does not warrant changing our decision. Although not explicitly stated, it was implicit in our decision that we do not share MAR's restrictive reading of the corporate experience requirements, compliance with which was intended to enable the agency to predict the contractor's ability to perform. While the RFP is susceptible of MAR's interpretation that each vessel was to be compared to each contract vessel for similarity as to length and horsepower, our view--consistent with that expressed in the portion of our decision addressing the 3-year operation requirement--is that provisions such as the 3-year requirement and the craft similarity requirements should be read in the least restrictive manner possible, consistent with the solicitation. See Computer Sciences Corp., B-213287, Aug. 6, 1984, 84-2 CPD ¶ 151.

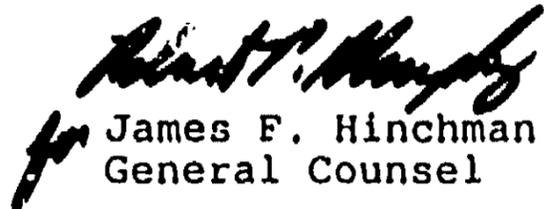
This was the rationale underlying the conclusion in our prior decision. Although the vessels proposed by SSI did not match up in length and horsepower with each of the vessels under the contract, our decision reflects our approval of the agency's approach of considering simply whether there were sufficient similarities in the vessels SSI had operated to enable the agency to determine that SSI could successfully operate the contract vessels. Under this approach, the agency properly concluded that one of SSI's vessels, the Guardian, satisfied the similarity requirement because it was comparable in horsepower (2,250) to that of three of the four specified Navy vessels (at 2,000, 2,350, and 3,000 horsepower), and similar in length (180 feet) to the Ranger (192 feet), the longest Navy vessel. Likewise, it reflects our rejection of MAR's interpretation as more restrictive than was necessary to serve the purpose of the corporate experience provision.

In order to support MAR's interpretation, we believe the RFP would have to contain some more definitive indication that the agency intended to conduct a vessel-by-vessel comparison, and reject all offerors that did not specify experience with the exact array of ships under the contract. The Navy apparently did not include more clearly restrictive provisions because, as evidenced by its issuance of the RFP on a competitive basis, it did not want to eliminate competition altogether; both MAR and the Navy acknowledge that applying MAR's strict

interpretation would have limited the competition to MAR, the incumbent contractor. Moreover, in light of MAR's knowledge that it was the only firm that could satisfy a restrictive reading of the experience provisions, the agency's issuance of the RFP on a competitive, rather than a sole-source, basis should have indicated to the firm that the Navy did not intend that the provisions be read as excluding all firms but MAR.

MAR also reiterates the argument raised in its initial protest that SSI failed to satisfy the solicitation requirement for experience in operating the vessels in the waters described in the SOW. MAR questions whether SSI had experience in operating throughout one of the areas identified in the SOW. While we did not discuss this specific argument in our prior decision, we did consider the question in concluding that the agency reasonably determined that SSI satisfied the experience provisions. Although SSI, in its proposal, described its area of operations only in broad terms, the area described generally encompassed the specific subareas identified in the solicitation. The Navy did not view SSI's failure to specifically list all of the numerous subareas as precluding a determination of compliance, and we do not find the agency's determination unreasonable.

As SSI has not demonstrated any errors of law or fact warranting reversal or modification of our decision, the request for reconsideration is denied.


for James F. Hinchman
General Counsel