

Matter of: Moon Engineering Co., Inc.
File: B-251698.7
Date: December 14, 1993

Terence Murphy, Esq., and C. Vance Beck, Esq., Kaufman & Canoles, P.C., for the protester.
Eric W. Schwartz, Esq., and Brian Schneiderman, Esq., Mays & Valentine, for The Jonathan Corporation, and Patricia H. Wittie, Esq., for Norfolk Shipbuilding & Drydock Corporation, interested parties.
Rhonda Russ, Esq., and Scott Garner, Esq., Naval Sea Systems Command, for the agency.
Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Procuring agency decision not to reveal to awardee competitors' cost information after protest was sustained and competition reopened is proper even though awardee's cost information was revealed to its competitors after it was awarded the contract. The agency reasonably determined that no competitive harm would result to the awardee because (1) the award is based on evaluated costs and only proposed costs were revealed; (2) 1 year has passed since the awardee's proposed costs were submitted; and (3) the requirements under the solicitation have changed.

DECISION

Moon Engineering Co., Inc. protests the Navy's refusal to release to Moon the costs proposed by other offerors under request for proposals (RFP) No. N00024-93-R-8500. Moon argues that it is at a competitive disadvantage because the contract that was previously awarded to Moon was released to Moon's competitors, allowing them to see Moon's proposed costs. Moon also protests that an RFP amendment issued by the Navy to reopen the competition pursuant to a General Accounting Office decision is invalid because the Navy failed to first terminate the contract previously awarded to Moon.

We deny the protest.

BACKGROUND

The RFP contemplated the award of a cost-plus-award-fee contract to provide all materials, services, and facilities necessary to perform phased maintenance on three ships over a 5-year period. Phased maintenance is a strategy in which maintenance is performed through a series of short, frequent phased maintenance availabilities (PMA), in lieu of regular overhauls. The solicitation also called for drydock-phased maintenance availabilities (DPMA) which involve putting a ship in drydock to perform repairs below the water line, in addition to the repairs that would be performed in a PMA. The solicitation included seven availabilities, five PMAs and two DPMAs.

Award under the solicitation was to be made to the offeror whose proposal was most advantageous to the government following a technical and cost evaluation. The solicitation instructed offerors to base their cost proposals on a notional work package which included 100 standardized repairs and alterations, including drydock work. For each of these 100 work items, offerors were required to propose the number of direct labor hours and the cost of materials to perform the item. Proposals also were to include estimates of the overall cost of performing all seven availabilities.

Five offerors submitted proposals in response to the RFP. The Navy concluded that the proposals were technically equal and awarded the contract to Moon based on Moon's lowest evaluated cost. Subsequently, two offerors, The Jonathan Corporation and Metro Machine Corporation, filed protests. We sustained the protests because in evaluating the cost proposals, the Navy failed to independently analyze the realism of each offeror's proposed costs based upon its particular approach, personnel, and other circumstances and thus did not perform a proper cost realism analysis. The Jonathan Corp.; Metro Mach. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174, recon. denied, Moon Eng'g Co., Inc.--Recon., B-251698.6, Oct. 19, 1993, 93-2 CPD ¶ ____. We recommended that the Navy reevaluate the cost proposals using a method of cost realism analysis that reasonably determines the extent to which each offeror's proposed costs represent what the contract should cost that offeror to perform.

DISCUSSION

Failure to Provide Competitors' Costs

The record shows that a copy of Moon's contract, including its proposed costs in schedule B of the contract, was released to a number of Moon's competitors. Moon argues

that the Navy's refusal to provide Moon with the schedule B of the other offerors provides those firms with an unfair competitive advantage over Moon due to their ability to examine Moon's pricing strategy.

In response, the Navy states that the contracting officer decided not to release the other offerors schedule B to Moon because some offerors objected to the release and because the contracting officer did not believe that Moon would be prejudiced if it were not given this information.¹ The Navy asserts that Moon has not identified any actual or possible competitive harm which will result from the Navy's refusal to release the other offerors' costs to Moon. The Navy reasons that since the costs from Moon's schedule B which were released to its competitors were Moon's proposed bottom line costs for each availability, not the individual notional item costs or the evaluated costs, the disclosed costs would not benefit the other offerors in the preparation of their proposals because the contract to be awarded is a cost reimbursement contract under which the award is based on evaluated costs, not proposed costs. The Navy also reports that it has made significant changes to the solicitation including an increase in the number of availabilities from five PMAs and two DPMAs to six PMAs and four DPMAs and changes in the performance dates of the availabilities so that now the timing of only two of the original seven availabilities is the same. Finally, the Navy points out that over 1 year has passed since the initial proposals were received.

It is sometimes appropriate for a procuring agency to release offerors' costs to their competitors where one offeror's costs have been exposed. See TM Sys., Inc., 55 Comp. Gen. 1066 (1976), 76-1 CPD ¶ 299; The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425. We have recommended such action where an offeror whose costs were exposed would suffer competitive prejudice if it was not permitted to review its competitor's costs. See Honeywell Info. Sys., Inc., 56 Comp. Gen. 505 (1977), 77-1 CPD ¶ 256. In our view, the issue is whether the contracting

¹The Navy acknowledges that some of the unsuccessful offerors were provided with copies of the contract awarded to Moon which incorporated Moon's proposed costs from schedule B. The Navy points out that Moon's contract was a public document which was routinely released to the public.

²In KPMG Peat Marwick, B-251902.3, Nov. 8, 1993, 93-2 CPD ¶ ____, we have reaffirmed that where competitive harm will otherwise be suffered, the procuring agency will be required to release evaluation documents to all offerors in the competitive range.

officer reasonably determined that no competitive advantage would accrue to the other offerors as a result of the disclosure of one offeror's costs. Here, we think that the contracting officer reasonably concluded that Moon would not be disadvantaged if Moon was not given access to its competitors' schedules.

Honeywell Info. Sys., Inc., supra, involved the award of a fixed-price contract. In that case, since the unit prices and the system configuration offered by Honeywell were exposed to its competitor, we concluded that Honeywell would be prejudiced unless comparable information from the competitor's proposal, including prices, was disclosed to Honeywell. Here, only Moon's lump-sum proposed costs for each availability were exposed. These costs are comprised of many elements, including labor and material costs for the standardized work items that make up the notional work package, labor rates, escalation factors, overhead rates, and other costs. None of these components of Moon's proposed costs were disclosed. Moreover, the contract will be awarded based on evaluated costs and Moon's evaluated costs were not exposed. Thus, Moon's competitors do not know to what extent Moon's proposed costs, as evaluated, were adjusted. Given these factors, we fail to see how Moon's competitors could use Moon's lump-sum proposed costs for the availabilities to structure their proposals to gain an advantage over Moon.

In addition, the Navy increased the number of ship availabilities from 7 to 10 and changed the timing of the availabilities.³ Also, it has been more than a year since Moon submitted its proposal. These factors would have an impact on proposed costs and thus would diminish any possible advantage Moon's competitors have based on the cost information released in Moon's contract.

Moon does not dispute the significance of any of these factors or their impact on the competitive process, or explain why, given these factors, it will be prejudiced.⁴

³While the original schedule included three availabilities in fiscal year (FY) 1994, two in FY 1995, and two in FY 1997, under the revised schedule, availabilities are concentrated in the "out years": one availability in FY 1994, three in FY 1995, one FY 1996, two in FY 1997, and three in FY 1998.

⁴Moon does assert that its proposed base and award fee pools and its inclusion of the cost of money for facilities have been exposed; according to Moon, the percentages involved in these figures are the same for the proposed and evaluated

(continued...)

Under the circumstances, we conclude that the contracting officer reasonably decided that Moon would not be disadvantaged by the Navy's refusal to provide it with its competitors' proposed costs.

Amendment of Solicitation

Moon notes that the contract which it was awarded is subject to a stop work order but has not been terminated. Moon therefore argues that the RFP amendments which the Navy issued to reopen the competition are void because they amend a solicitation for which a contract has been awarded.

When our Office sustains a protest and recommends that the procuring agency reopen a competition, typically we do not require the agency to terminate an awarded contract unless it determines that the initial awardee will not be the awardee after the corrective action is taken. To do so would serve no practical purpose since the initial awardee may retain the award. Moon has not pointed to any actual or potential prejudice it will suffer because the agency

⁴(...continued)

costs and thus give Moon's competitors information related to Moon's evaluated costs. Again, due to the changes in the agency's requirements and the passage of time since Moon submitted its costs, we believe that the contracting officer reasonably concluded that the disclosure of this information to Moon's competitors did not warrant releasing the competitors' schedules.

amended the solicitation without first terminating Moon's contract.

The protest is denied.⁵

James F. Hinchman
General Counsel

⁵In response to our decision The Jonathan Corp.; Metro Mach. Corp., supra, the Navy amended the RFP to indicate that it would evaluate all proposals using its own labor hour and material cost estimates for 62 of the 100 notional work items. Moon protested that the amended RFP, by requiring that the cost evaluation be based on the Navy's preestablished estimates for these 62 work items, improperly denied offerors the opportunity to present to the Navy their particular approach, personnel, and other circumstances. Moon asked that we recommend that the Navy amend the RFP to delete the requirement that the evaluation of the 62 work items would be based on the Navy's estimates. In response, the Navy amended the solicitation to permit offerors to deviate from the preestablished estimates if they could provide a rationale for doing so. Since the Navy's corrective action addressed Moon's complaint, we dismiss this issue as academic. See Steel Circle Bldg. Co., B-233055; B-233056, Feb. 10, 1989, 89-1 CPD ¶ 139.