

DECISION



8261 J. K. [unclear]
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-192251

DATE: November 7, 1978

MATTER OF: Southwest Marine, Inc.;
Triple "A" South

DIGEST:

Solicitation requirement that vessel overhaul services be performed at contractor's facilities was not unduly restrictive of competition since there is no legal requirement that agency offer to furnish Government facilities for contract performance to permit otherwise inadequately equipped bidders to bid on any given procurement.

Southwest Marine, Inc. (Southwest) and Triple "A" South (Triple "A") protest the failure of invitation for bids (IFB) No. N65870-78-B-0010 to permit bidders to perform naval vessel overhaul work at the U.S. Naval Station piers in San Diego as an alternative to the invitation's requirement that the work be performed at contractor waterfront facilities. It is contended that qualified small business concerns are effectively precluded from competition by the invitation requirement because they lack adequate waterfront facilities to perform such work. Protesters claim that they have performed several prior vessel overhauls under contracts allegedly permitting the use of Government facilities, and that the field of competition for this procurement could have been expanded had the procuring activity permitted the use of Government property.

The IFB was issued by the Supervisor of Shipbuilding, Conversion and Repair, Long Beach Naval Shipyard, Long Beach, California for the overhaul of the U.S.S. AJAX. Bids were opened on July 31, 1978 with the following result:

National Steel and Ship- building Company	\$	4,299,000
Southwest Marine (two bids)		4,552,527
		4,301,352
Bethlehem Steel Corporation		6,721,700
Todd Pacific Shipyard Corporation		10,272,321

Triple "A" did not submit a bid. Both of the Southwest "bids" were nonresponsive. As explained by Southwest in a letter accompanying its "bid":

"The price of \$4,552,527.00 is all inclusive and complies with all requirements set forth in the IFB, but the contractor [sic] cannot comply with the 'place of performance' because his waterfront facility is not capable of berthing this vessel. The price of \$4,301,352 is to perform all work as specified, with the following exception: The ship must be berthed at the San Diego Naval Station."

Southwest estimates that \$155,630.00 should be added to its "low bid" as an evaluation factor for the use of the Government facility. Thus even accepting Southwest's "evaluation" factor as correct, its bid, assuming use of the San Diego facility, would have been evaluated \$157,982 higher than the low bid.

On August 17, 1978, it was determined by the contracting officer that a delay in adherence to the completion schedule for the overhaul would impact adversely upon post-overhaul commitments of the U.S.S. AJAX. Accordingly, pursuant to the Defense Acquisition Regulation/ Armed Services Procurement Regulation (DAR/ASPR) 2-407.8(b)(3) (ii) (1976 ed.), the contracting officer determined that an award must be made prior to the resolution of the protest by our Office. Consequently, award was made to the National Steel and Shipbuilding Company (National Steel) on August 29, 1978.

In its report to this Office, the Navy advises that the procurement was initially intended exclusively for the Long Beach area, where there are no Government facilities available for use in this effort. Since only two concerns

in the Long Beach area were known to possess the requisite private facilities, the Navy claims that in the interest of expanding competition, it decided to extend the bid area to Southern California generally. The Navy also states that it "explored the feasibility of making available the piers at the U.S. Naval Station, San Diego, as an alternative place of performance," but that it did not have available the necessary rental values for the pier space or a reasonable estimate of the support services (electric power, water, steam, compressed air, etc.) which it could use as a suitable evaluation factor to eliminate the competitive advantage which would accrue to any firm which bid on the basis of using these facilities. DAR/ASPR 13-501 requires the application of these evaluation factors in competitive procurements of this nature. Thus the Navy claims that it was precluded from offering the San Diego facilities for use in the performance of the contract.

As a general matter, we have held that the propriety of a particular procurement must be determined from the standpoint of whether adequate competition and reasonable prices were obtained, not upon whether every possible bidder was afforded an opportunity to bid. 50 Comp. Gen. 565, 571 (1971). We have also consistently stated that while specifications should be drawn to maximize competition, we will not take exception to an agency's specifications, even where competition is thereby reduced, unless it is clear that a contract awarded on the basis of such specifications would be in violation of law because of unduly restricted competition. Winslow Associates, 53 Comp. Gen. 478, 481 (1974), 74-1 CPD 14. In this respect, there is no legal requirement of which we are aware which requires an agency to furnish Government facilities so as to permit otherwise inadequately equipped bidders to bid on any given procurement. Indeed, the policy of the Department of Defense is to the contrary. DAR/ASPR 13-301. What is of concern, if such facilities are available, is the ability to obtain adequate price competition without their use. DAR/ASPR 13-301(b). Based on the above considerations, we believe the record indicates that adequate competition at reasonable prices was obtained. In this respect

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we point out that National Steel's bid was substantially lower than Southwest's bid predicated upon use of Government facilities and utilizing Southwest's own calculations of the evaluation factor to be applied to its bid.

In view of the foregoing, we find no basis to object to the Navy's failure to offer the use of Government property for the performance of this contract.

The protest is denied.

R. O. K. 11/12
Deputy Comptroller General
of the United States