



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Todd Pacific Shipyards Corporation

File: B-281383

Date: February 1, 1999

Dennis H. Walters, Esq., Karr, Tuttle, and Campbell, for the protester.
Kimberly A. Kegowicz, Esq., Department of Transportation, for the agency.
Katherine I. Riback, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation for ship repair is improper where the record evidences that the stated foreseeable costs to be added to each bidder's bid price to determine the low bidder are grossly understated.

DECISION

Todd Pacific Shipyards Corporation protests invitation for bids (IFB) No. DTCG85-98-B-625M51, issued by the Department of Transportation, U.S. Coast Guard (USCG), for furnishing the necessary labor, materials, and facilities to dry-dock and repair the USCG Cutter Polar Star (an icebreaker).

We sustain the protest.

The IFB, issued on September 21, 1998, provides for award on the basis of price and price-related factors. The IFB lists a variety of costs that the government expects to incur in moving the ship to and from the contractor's shipyard; these anticipated costs, which according to the distance between the bidder's shipyard and the ship's location, are to be added for evaluation purposes to the bid prices to determine the lowest bidder. IFB § M.3. Among the foreseeable costs called out in the solicitation is "[t]he cutter's fuel, maintenance and personnel cost for one (1) round trip from the cutter's home moorage at . . . Seattle, [Washington] to contractor's place of performance at \$172.30 per nautical mile." IFB § M.3.A.

Todd protested to our Office before the November 17 bid opening, arguing that the \$172.30 per nautical mile is outdated, and that the actual fuel, maintenance and personnel costs that will be necessary to move the Polar Star to and from the contractor's place of performance are much higher, such that the IFB contains no

reasonable method for determining which bid provides the lowest overall cost to the government.¹

The agency states that the current rate of \$172.30 per nautical mile for transiting cutters of the Polar Star's class to and from prospective shipyards was established in 1991 based on 1989 and 1990 data. Jan. 14, 1997 Notes from Vessels Conference at 1. The agency states that they are currently in the process of updating these rates, but that revising the rates is a "complex and far reaching process." Agency Memorandum of Law at 4. Regarding the present solicitation, the agency contends that the IFB clearly and concisely stated the foreseeable cost formula to be used in the evaluation of the low bidder, and that all bidders were able to prepare their bids on an equal and well informed basis. Agency Memorandum of Law at 2.

Under Federal Acquisition Regulation § 14.201-8, the evaluation of price-related factors, including foreseeable costs "to the Government resulting from such factors as differences in inspection, locations of supplies, and transportation," is a proper basis for award in a sealed bidding procurement. Cascade Gen., Inc., B-272271, Aug. 1, 1996, 96-2 CPD ¶ 52 at 2. "While a nonlocal facility is assessed a higher transportation charge, the charge simply reflects an actual cost to the government, which is entitled to consider this cost in evaluating bids." Marlen C. Robb & Son, Boatyard & Marina, Inc., B-256516, June 28, 1994, 94-1 CPD ¶ 392 at 3. However, when a solicitation lacks accurate foreseeable costs, the agency cannot determine whether award to one firm versus another will result in a lower cost to the government. See Hoechst Marion Roussel, Inc., B-279073, May 4, 1998, 98-1 CPD ¶ 127 at 3 (protest sustained where solicitation for drugs did not state accurate dosage estimates); Beldon Roofing & Remodeling Co., B-277651, Nov. 7, 1997, 97-2 CPD ¶ 131 at 7 (protest sustained where solicitation for roofing work lacked accurate quantity estimates).

We agree with the protester that the 1989 and 1990 rates that the agency used in the solicitation are outdated; however, this fact alone is not determinative. See Southgate Servs., B-246758, Mar. 20, 1992, 92-1 CPD ¶ 300 at 5-7 (protest denied where solicitation included older estimates because more recent estimates were unreliable). What we find determinative, from our review, is that the rate, if

¹The agency received bids under the IFB from Cascade General, Inc. of Portland, Oregon and from Todd Pacific Shipyards of Seattle. Cascade's bid was \$3,488,114 and Todd's was \$3,732,863, prior to the application of the foreseeable cost factors. Cascade's bid was \$3,682,317.20, after adding \$194,203.20 in foreseeable costs, including \$124,745.20 in operating mileage costs. Todd's bid was \$3,755,763.20, after adding \$22,900.20 in foreseeable costs, including \$689.20 in operating mileage costs. On December 4, the agency determined that there were urgent and compelling circumstances which significantly affect the interests of the United States that required award and contract performance, notwithstanding the protest.

calculated in the same manner as the 1991 rate but using the most recent historical cost data, appears to be grossly understated. During the course of this protest, the agency provided under protective order historical data on the operating costs of its ships, which the agency is reviewing to determine what rates should apply to future solicitations. Since the agency has not yet decided how it will use this data to calculate the operating cost factor for its ships, we provide no details regarding this historical data. However, this data did indicate a substantial increase in operating costs which, if applied, could change the outcome. Since the agency asserts that it was appropriate to use the 1991 rate while it was determining how to calculate foreseeable costs for its ships to be used in future solicitations and does not assert that this rate relates to current actual costs to the government, the record does not evidence that the solicitation stated the actual foreseeable costs with any reasonable degree of accuracy.

While the agency argues that the calculation of final rates is a lengthy process that must take into account, among other factors, differing situations on the East and West Coasts, the agency has not explained why it could not simply adjust the rates in this IFB to make them as accurate as reasonably possible, even if such a correction is not applied nationwide. Under the circumstances, we cannot say that the solicitation provides a rational basis for the government to determine whether award to one firm versus another will result in a lower cost to the government. Accordingly, we sustain the protest.

We are advised that because the agency authorized an award to Cascade, notwithstanding the protest, the Polar Star has arrived in Portland and contract performance has commenced. Thus, we do not believe that it is practicable to disturb the award.² However, we do recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including attorney's fees. 4 C.F.R. § 21.8(d)(1) (1998). In accordance with 4 C.F.R. § 21.8(f)(1), Todd's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

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of the United States

²When an agency overrides a Competition in Contracting Act (CICA) stay based upon a written finding of urgent and compelling circumstances, CICA permits our Office to consider all circumstances--including cost and disruption to the government--in fashioning the appropriate remedy under a sustained protest. See 31 U.S.C. § 3554(b)(1) (1994); 4 C.F.R. § 21.8(b) (1998); Arthur Young & Co., B-216643, May 24, 1985, 85-1 CPD ¶ 598 at 7-8.