



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Southwest Marine, Inc.; American Systems Engineering Corporation--
Reconsideration

File: B-265865.5; B-265865.6

Date: June 3, 1996

Peter B. Jones, Esq., Jones & Donovan, for Southwest Marine, Inc.; James J. McCullough, Esq., Joel R. Feidelman, Esq., Anne B. Perry, Esq., and C. Anthony Trambley, Esq., Fried, Frank, Harris, Shriver & Jacobson, Esq., for American Systems Engineering Corporation, for the protesters.
Michael J. Cunningham, Esq., and David H. Turner, Esq., Department of the Navy, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protesters' request for reimbursement of protest costs that resulted from the contracting agency's failure to retain evaluation documentation in accordance with the Federal Acquisition Regulation is denied where, despite the destruction of documents, the General Accounting Office found that the agency's evaluation, source selection and award were reasonable and in accord with statute and regulation.

DECISION

Southwest Marine, Inc. (SWM) and American Systems Engineering Corporation (AMSEC) request reconsideration of our decision in Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3; B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56, in which we denied the SWM's and AMSEC's protests of the award of a contract to BAV, under request for proposals (RFP) No. N00140-95-R-F021, issued by the Department of the Navy for engineering, technical, and logistics support services.

We deny the requests for reconsideration.

In our prior decision, we found, among other things, that the Navy had properly evaluated the firms' technical proposals and reasonably selected BAV's higher-cost, higher-rated proposal for award as representing the best value to the government. We also found that the evaluation documentation retained by the Navy did not satisfy Federal Acquisition Regulation (FAR) § 15.608(a)(2)(ii), which requires the

agency to sufficiently document its evaluation judgments.¹ We conducted a hearing, in part, to obtain the agency's explanation of its evaluation of the offerors' technical proposals and its selection of BAV's proposal, given that the retained documentation did not sufficiently justify the award selection. As a result of the hearing, as well as the parties' arguments and explanations, the protest record was adequate to explain the agency's procurement actions and to allow our Office to effectively review the protest matter.

SWM and AMSEC request that we modify our prior decision to recommend that the protesters be reimbursed for the protest costs that resulted from the Navy's violation of FAR § 15.608. The protesters state that the Navy's violation of the FAR resulted in increased protest costs relating to the conduct of the hearing and filing of post-hearing comments.

Our authority to declare entitlement to the reimbursement of protest costs is derived from the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3554 (1988), which provides in pertinent part that:

"(c)(1) If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may declare an appropriate interested party to be entitled to the costs of--

(A) filing and pursuing the protest, including reasonable attorneys' fees. . . ." [Emphasis added.]

As the plain language of CICA indicates, Congress intended that we should find protesters entitled to reimbursement of the costs of filing and pursuing protests only where we have found an agency's solicitation, proposed award, or award did not comply with statute or regulation. See H.R. Rep. No. 98-861, 98th Cong. 2d Sess. 1437, reprinted in 1984 U.C. Code Cong. & Ad. News 2109, 2125 ("[f]inally, the conferees expect that the Comptroller General will declare monetary awards only in cases where the agencies have unfairly excluded vendors from procurements, and not in cases involving minor technicalities"); see also Teknion, Inc.--Claim for Costs, B-230171.22 et al., Sept. 6, 1988, 88-2 CPD ¶ 213.

¹FAR § 15.608(a)(2)(ii) provides that an agency's technical evaluation documentation is required to include "[a]n analysis of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements." Here, the Navy destroyed the evaluators' notes and workpapers after the preparation of the final evaluation report, and the evaluation report did not sufficiently explain the differences in the ratings provided the parties' proposals.

Here, we find no authority under CICA to award protest costs to SWM or AMSEC. While it is true that we found the Navy's destruction of evaluation documentation to be improper and not in compliance with FAR § 15.608, this did not, as we explained in our prior decision, affect the propriety of the award. To the contrary, we specifically found the Navy's evaluation and source selection to be reasonable and in accord with statute and regulation. Because the Navy's failure, in this case, to comply with the documentation requirements of FAR § 15.608 did not result in our determination that the Navy's award was inconsistent with statute or regulation, we have no authority under CICA to declare that the protesters should be reimbursed their protest costs that resulted from the Navy's destruction of documents.

Accordingly, the requests for reconsideration are denied.

Comptroller General
of the United States