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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-201346

DATE: May 7, 1981

MATTER OF: Global Marine Development, Inc.

DIGEST:

06651

Protest against Department of Energy (DOE) having operating contractor conduct subcontract competition rather than direct procurement by DOE filed after closing date for receipt of proposals is untimely under 4 C.F.R. § 20.2(b)(1) (1980) since relationship of parties was apparent from solicitation. Contention that requirement was beyond scope of operating contract and should have been competed is not significant issue under 4 C.F.R. § 20.2(c) (1980) because GAO has previously ruled in area of contract modification versus new procurement.

Global Marine Development, Inc. (GMDI), has protested the award of a contract to Tracor Marine Inc. (Tracor) under request for proposals (RFP) No. PB80-11897 issued by the Energy Technology Engineering Center (ETEC).

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ETEC is a Government-owned facility operated by Rockwell International (RI) under Department of Energy (DOE) operating contract No. DE-AM03-76SF00700.

In 1978, GMDI was awarded a contract by DOE for the design and conversion (phases I and II) of a Government-owned tanker into an engineering test facility to be used in at-sea testing of ocean thermal energy conversion subsystems and components. The contract contained an option for the system operation and support, designated as

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[Protest of DOE Contract Award]

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phase III, following the completion of phases I and II. Under phases I and II, RI was the test director for the program.

After completion of phases I and II, DOE determined not to exercise the option under GMDI's contract for phase III. After exploring various alternatives, DOE decided to add the ship (designated the SS Energy Converter) as part of the ETEC facilities, operated by RI, and have RI conduct a competitive procurement for phase III. It is the award of this subcontract by RI which GMDI has protested.

On August 7, 1980, RI issued the RFP with an initial proposal due date of September 12, 1980. GMDI submitted its initial proposal in a timely manner and submitted its best and final offer on October 17, 1980. One other offer was received from Tracor and on November 13, 1980, award was made to Tracor by RI as the lowest priced, technically acceptable offer. GMDI protested to our Office on November 25, 1980.

GMDI's protest alleges numerous shortcomings and improprieties in the instant procurement process. Initially, GMDI contends that adding this work to RI's existing operating contract rather than having a competition conducted by DOE leading to the award of a prime contract was improper as the task was beyond the scope of RI's operating contract. Secondly, because of RI's prior role as test director under phases I and II, GMDI alleges a conflict of interest is apparent by RI assuming the role of prime contractor for phase III. Lastly, GMDI contends that because of its experience under phases I and II, a duplication of the services and expertise it possesses by Tracor to perform phase III will cost \$4 million.

DOE contends that GMDI's protest is untimely under our Bid Protest Procedures (4 C.F.R. part 20 (1980)) and not for consideration on the merits. DOE argues that the GMDI protest is based on the fact that RI was acting as a prime contractor for phase III, which was apparent from the RFP issued by RI and from other correspondence GMDI received under Freedom of Information Act requests and, therefore,

to be timely, the protest should have been filed prior to the closing date for receipt of initial proposals, September 12, 1980. (4 C.F.R. § 20.2(b)(1) (1980)). GMDI's protest was not filed with our Office until November 25, 1980, after GMDI received a letter dated November 14, 1980, advising its best and final offer had not been accepted.

GMDI argues that it was not aware of the changed role of RI from test director to prime contractor for phase III from the contents of the RFP or from oral discussions conducted by RI during the procurement. — Because of the alleged confusion in this area, GMDI contends that the role of RI was not made clear until GMDI received an announcement of December 15, 1980, that DOE was adding the SS Energy Converter as part of the Government-furnished property under the ETEC operating contract.

Our review of the record shows that GMDI knew or should have known of the basis for its protest from the RFP and other documents available to it prior to the submission of proposals. GMDI's original contract for phases I and II, with the option for phase III, was a direct DOE contract, awarded by DOE personnel. The instant RFP was issued on RI letterhead, offerors were told to submit proposals to RI for evaluation and discussions, and the RFP stated:

"Rockwell International, Energy Systems Group, Energy Technology Engineering Center (ETEC), is under contract to the Department of Energy to conduct an operational test program for performance of at-sea demonstrations of Ocean Thermal Energy Conversion (OTEC) technology."

We believe this clearly showed that RI was the prime contractor in the process of awarding a subcontract. Moreover, we do not find the announcement of December 15, 1980, 1 month after GMDI's protest was filed with our Office, made GMDI aware of its basis of protest.

Moreover, GMDI has submitted a chart which it alleges shows the reduction in work from the original phase III GMDI contract, through a negotiated statement of work (SOW) in November 1979 with DOE when it was expected that the phase III option would be exercised and concluding with the SOW for the instant RFP which it states shows the reduction in the scope of the phase III task. We believe this chart shows the alleged changes, which GMDI contends tainted the procurement, were apparent from the RFP.

Therefore, we find the protest of GMDI to have been untimely filed under 4 C.F.R. § 20.2(b)(1) (1980).

GMDI alleges that even if its protest is untimely, our Office should consider the protest on the merits since it involves a significant issue under 4 C.F.R. § 20.2(c) (1980), which states that our Office will consider an untimely protest where it raises issues significant to procurement practices or procedures.

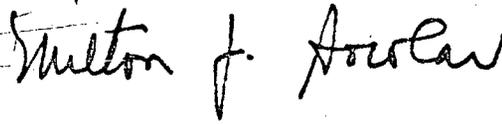
GMDI argues that the instant procurement was based on DOE's procedure of utilizing a form 189a, or a task order to change or add work to an operating contractor's contract, which our Office has never ruled on and which constitutes the award of a contract without competition.

While GMDI has phrased its protest as involving the use by DOE of its form 189a, the crux of the protest is whether the change or addition to RI's operating contract was beyond the scope of the existing contract, thereby necessitating a direct competitive procurement. Our Office has ruled in this area on numerous occasions and does not find it significant as to require waiving the filing requirements contained in our Bid Protest Procedures. Webcraft Packaging, Division of Beatrice Foods Co., B-194087, August 14, 1979, 79-2 CPD 120; American Air Filter Co., Inc., 57 Comp. Gen. 285 (1978), 78-1 CPD 136; 50 Comp. Gen. 540 (1971); Symbolic Displays, Incorporated, B-182847, May 6, 1975, 75-1 CPD 278.

Finally, regarding GMDI's contention that having Tracor perform phase III will result in a duplication of \$4 million of services and expertise, DOE has

responded that the only special training Tracor personnel needed was evaluated at a cost of \$57,500 and this amount was added to Tracor's proposed cost. Since phase III is different from phases I and II performance, we have no objection to this evaluation factor and the subsequent award to Tracor.

The protest is dismissed in part and denied in part.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

Acting Comptroller General
of the United States