

DECISION

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

FILE: B-213738

DATE: July 2, 1984

MATTER OF: Triple A Shipyards

DIGEST:

1. Protest alleging that agency's cost analysis was not in accord with methodology set forth in RFP and that methodology employed was not reasonable is denied where record indicates that agency's cost analysis had a reasonable basis and did follow the provisions set forth in the RFP.
2. Contracting agency's analysis of proposals for cost realism involves the exercise of informed judgment, and GAO therefore will not disturb a cost realism determination unless it is shown to lack a reasonable basis.
3. Determination of agency's minimum needs and best method of accommodating those needs are primarily the responsibility of the contracting agency. Agency decision to eliminate RFP requirement and procure services by amending prime contract and directing prime contractor to compete subcontract for requirement is reasonable where effect of decision is to increase competition for prime contract.
4. Where agency does not notify competing offerors of intention to make award under 100-percent small business set-aside due to a proper urgency determination, effect of Small Business Administration's finding that awardee is not small is prospective and termination of contract is not required. Furthermore, whether options should be exercised is a matter to be resolved by the agency in accordance with applicable regulations.

Triple A Shipyards (Triple "A") protests the award of a contract to Southwest Marine, Inc. (SWM), under request for proposals (RFP) No. N00024-83-R-8539 issued by the Naval Sea Systems Command (Navy) for the advance planning, design, repair and modernization of four AOR class vessels home ported in the San Francisco Bay area under the AOR Phased Maintenance Program.

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We deny the protest.

The Navy indicates that the Phased Maintenance Program represents an alternative strategy for the overhaul of Navy ships. The AOR class vessels have a 5-year operating cycle and, rather than undergoing a single long overhaul, ships under the Phased Maintenance Program undergo a series of shorter overhauls of 3 or 4 months in duration. In addition, the Navy states that only those repairs which are actually needed at the time the ship is scheduled for work are authorized.

The Navy issued this solicitation on May 18, 1983, as a total small business set-aside. The RFP covered the Navy's planned maintenance program for the four AOR class vessels through fiscal year (FY) 1988. Contract line items (CLIN's) 0001-0011 represented work which was to be performed in FY 1984 and included the repair and alteration of the USS Kansas City and the USS Wichita, as well as advance planning for ship overhauls in FY 1985 and FY 1986. CLIN's 0012-0032 were option items and covered the work to be performed on the AOR class vessels through FY 1988.

Five small business firms submitted proposals. The Contract Award Review Panel evaluated the initial technical proposals and the Cost Realism Team (CRT) evaluated the initial cost proposals. Discussions were conducted and offerors were given the opportunity to submit best and final offers on two separate occasions. After the final evaluation, the Navy determined that the technical scores and the overall scores were essentially equal. Accordingly, the Navy decided to award the contract to the offeror that had submitted the lowest total cost to the government. The Navy determined that SWM was low and SWM was awarded a cost-plus-award-fee contract on November 2, 1983.

Triple "A" argues that the Navy's cost evaluation was not done in accordance with the methodology set forth in the RFP. Alternatively, Triple "A" argues that even if the cost evaluation was properly done, SWM's estimated cost of \$107 million was unrealistically low and should have been rejected. In addition, Triple "A" protests the Navy's determination to procure drydocking services by modifying SWM's contract rather than through a direct competitive procurement. Finally, Triple "A" argues that since SWM has subsequently been determined not to be small, the contract should be terminated or, at the least, the Navy should be directed not to exercise any contract options.

Cost Evaluation

Attachment II to section "L" of the RFP described what was required to be included in each offeror's cost proposal and, generally, informed all offerors how the Navy would evaluate the cost proposals to arrive at a total cost category score. Attachment II required offerors to submit a Department of Defense form 633 (DD form 633), for use in procurements when submission of current cost or pricing data is required, and offerors were required to certify that all cost or pricing data was accurate, complete and current. Offerors were required to provide the Navy with cost estimates in a number of areas (e.g., direct labor and overhaul costs), as well as a total estimated cost. Paragraph I of attachment II also indicated that the cost estimate for each ship availability was to be based on the notional work package which was contained in section "J-2" of the solicitation. The Navy states that the notional work package represents the Navy's approximation of the type of actual work which would be necessary on each of the AOR class vessels during the Phased Maintenance Program. The Navy indicates that the notional work package consisted of approximately 180 work specifications for the first ship availability. Actual work packages for the remaining vessels could not be determined until a date closer to a particular ship's actual availability.

In addition, paragraph IV of attachment II required offerors to provide detailed cost information and supporting data for 36 sample work items. The CRT analyzed each offeror's cost estimates for these items and compared them to the government estimates for the same tasks. Based on this comparison, the Navy determined each offeror's cost realism score and developed an adjustment factor based on this score. This adjustment factor was applied to each element of an offeror's cost estimate for the first ship availability that was similar to the sample work items. Those elements which were adjusted (i.e., similar to the sample work items) were added to the nonadjusted elements to determine the offeror's projected cost to the government for the first ship availability. The Navy indicates that this adjustment factor was then applied in a similar fashion to an offeror's total projected cost for the remaining ship availabilities through FY 1988 to arrive at an overall projected cost to the government.

Initially, Triple "A" argues that the evaluation of option items was improper and contrary to the RFP. Triple "A" contends that attachment II, and particularly

paragraphs II-VII, required the Navy to determine the lowest projected cost based solely on the work items covered by paragraph II. Triple "A" argues that the estimated costs which were provided for CLIN's 0012-0032 (option items) were provided in section "B" of the RFP for internal accounting purposes only. Although Triple "A" acknowledges that the RFP incorporated section 7-2003(11)(b) of the Defense Acquisition Regulation (DAR), which specifically states that option will be evaluated, Triple "A" argues that the clause is prescribed for use in fixed price contracts only and that the clause conflicts with the specific provisions in attachment II which should take precedence. DAR § 7-2003(11)(b), reprinted in 32 C.F.R. pts. 1-39 (1983).

Our review of attachment II indicates that there is no conflict with DAR § 7-2003(11)(b). Paragraph II merely represented the work package for the first ship availability and did not in any way prohibit the Navy from evaluating option items. Although the information in section "B" was to be used for internal auditing purposes, DD form 633 also required the bottom line estimates for each CLIN, which the Navy did refer to for evaluation purposes. We find that DAR § 7-2003(11)(b) clearly put offerors on notice that option prices would be evaluated and we find nothing in the RFP which contradicts this provision.

In addition, we note that the use of the "Evaluation of Option" clauses is not limited solely to fixed-price contracts and we cannot find that the Navy's use of the clause in the present RFP was inappropriate. Section 1-1504(c) of the DAR permits the evaluation of options in any type of contract as long as certain determinations have been made by the chief of the contracting office. The Navy states that it has been a longstanding policy that options should be evaluated in cost-type solicitations for the repair and overhaul of Navy ships and that this policy has been approved by the chief of the contracting office. Accordingly, we find that DAR § 7-2003(11)(b) was properly incorporated into the RFP. The fact that no written determination was made does not affect the legality of the award. Logistical Support, Inc., B-212218; B-212219, Feb. 23, 1984, 84-1 C.P.D. ¶ 231.

Triple "A" also argues that the cost evaluation was not reasonable. Triple "A" contends that the application of the net dollar adjustment, which was derived from the Navy's cost realism analysis for the first ship availability, should not have been applied to the remaining ship availability. Triple "A" argues that the adjustment factor

for the first ship availability has only limited availability, if any, to projecting an offeror's future costs. In addition, Triple "A" contends that the Navy should have taken into account inflation rates, future overhead rates and other anticipated cost changes. Finally, Triple "A" argues that the Navy should have conducted a cost realism analysis on each offeror's projected cost for the option items and that SWM's total projected cost estimate was unrealistically low.

The Navy indicates that the application of the adjustment factor to the four ships availabilities was a proper method for determining the total projected cost. The Navy states that the four ships are similar and that the type of costs incurred in overhauling the ships are also similar. The Navy indicates that the adjustment factor was only applied to items which were similar to the sample work items and that the remaining elements were separately evaluated and adjusted by the CRT. In addition, the Navy states that although it was not required to do so, inflation factors, future overhead rates and other anticipated costs were considered. Finally, the Navy indicates that it was able to make a proper and realistic assessment of an offeror's cost estimating techniques based on the 36 sample work items and that it found SWM's total estimated cost to be reasonable.

Our review of cost realism assessments is limited to a determination of whether an agency's cost evaluation was reasonably based and was not arbitrary. Robert E. Derecktor of Rhode Island, Inc., Boston Shipyard Corp. B-211922; B-211922.2, Feb. 2, 1984, 84-1 C.P.D. ¶ 140. We have consistently held that a contracting agency's analysis of competing cost proposals involves the exercise of informed judgment and is entitled to great weight because the agency is in the best position to determine the realism of costs under the proposed technical approaches. Ecology and Environment, Inc., B-209516, Aug. 23, 1983, 83-2 C.P.D. ¶ 229. Setac, Inc., B-209485, July 25, 1983, 83-2 C.P.D. ¶ 121. Costs should be examined in sufficient depth to arrive at a valid "should cost" estimate for the proposal. Southern California Ocean Studies Consortium, 56 Comp. Gen. 725 (1977), 77-1 C.P.D. ¶ 440.

We believe the Navy's cost analysis was reasonable. Triple "A" does not challenge the government estimates for the sample work items and, in our view, has provided no real evidence to convince us that the Navy's methodology

was unreasonable. The Navy indicates that the adjustment factor was only applied to similar items with respect to each ship availability and that cost elements for each availability which were not similar to the sample work items were separately evaluated by the CRT. Based on the record, we cannot say that such an approach was unreasonable or that the Navy was required to conduct a separate cost realism analysis for each availability.

Triple "A"'s remaining two allegations are also without merit. The Navy indicates that inflation factors, future overhead rates and other anticipated cost changes were considered in the cost analysis. With respect to Triple "A"'s contention that SWM's estimated total cost was too low, Triple "A" has failed to submit any evidence to substantiate its claim that SWM materially understated man-hours and hourly labor rates. Accordingly, Triple "A" has failed to meet its burden of affirmatively proving its case. Setac, Inc., B-209485, supra.

Drydock Services

The Navy indicates that under the Phased Maintenance Program, it was expected that there would be one availability for each ship where some work requiring drydocking would have to be performed. In the San Francisco area, however, only two firms possessed adequate drydock facilities for AOR class vessels and only one of those was a small business firm (Triple "A"). The Navy states that including the drydocking as a requirement in the solicitation would have excluded four other small businesses in the area that were capable of performing the vast majority of the work.

As a result, the Navy eliminated the drydocking requirement from the RFP. After the contract was awarded to SWM, the Navy directed SWM to compete the subcontract for the drydocking package. In response to that solicitation, SWM received one proposal and a letter from Triple "A" indicating that it was submitting its proposal directly to the Navy since SWM is its competitor. Triple "A" argues that the Navy should have competed the drydocking services directly.

The determination of the government's actual needs and the best method of accommodating those needs are primarily the responsibility of the contracting agency. Consequently, we will not question an agency's determination of its actual minimum needs unless there is a showing

that the determination has no reasonable basis. Ridg-U-Rak, Inc. B-211395, Aug. 8, 1983, 83-2 C.P.D. ¶ 179. In addition, the protester carries the burden of showing that the agency's determination as to the best method of accommodating its minimum needs was not reasonable. Baucom Janitorial Services, Inc., B-210216, May 31, 1983, 83-1 C.P.D. ¶ 584.

We find that the Navy's decision to eliminate the drydocking requirement from the RFP and procure these services by amending SWM's contract was reasonable and consistent with the Navy's obligation to maximize competition. Furthermore, we note that Triple "A" did have an opportunity to compete for the drydocking requirement, but declined to do so. The mere fact that Triple "A" disagrees with an agency's discretionary decision is not grounds to disturb it. James G. Biddle Company, B-196394, Feb. 13, 1980, 80-1 C.P.D. ¶ 129. We conclude that Triple "A" has failed to show that the Navy's decision in this regard lacked a reasonable basis.

Propriety of Award and the Exercise of Options

Due to a determination of public exigency, the Navy awarded this contract to SWM without prior notification to other offerors. After being advised of the award, Triple "A" filed a timely size status protest with the Small Business Administration (SBA). The SBA's regional office, on December 6, 1983, determined that SWM was other than a small business concern and, on February 1, 1984, this determination was affirmed by the SBA's Office of Hearing and Appeals. Triple "A" argues that the contract award to SWM was, therefore, improper and should be terminated or, at the least, that the options should not be exercised. The Navy argues that the termination of the present contract is not in the best interests of the government and that the exercise of options is a matter of contract administration which the Navy will review in accordance with applicable regulations.

Our decisions have clearly held that where an award of a small business set-aside is made without prior notice to competing offerors, the award must be subject to a timely size status protest if the small business size status protest procedures are not to be circumvented. Mil-Tech Systems, Corp.; ACR Electronics, Inc. B-200260, B-200260.2, Feb. 9, 1981, 81-1 C.P.D. ¶ 78; R. E. Brown Co., Inc., B-193672, Aug. 29, 1979, 79-2 C.P.D. ¶ 164.

However, those decisions involved circumstances where the agency was obliged to notify competing offerors of the intent to award a set-aside contract, but failed to do so. Here, the contracting officer waived the notice requirement due to an urgency determination. Since award was urgent, the contracting agency was not required to follow the 5-day notification rule to enable unsuccessful offerors to file a size protest. DAR §§ 1-703(b)(1), 3.508.2(b); see also American Maintenance Management Services, Incorporated, B-179126, Feb. 12, 1974, 74-1 C.P.D. ¶ 64. Under these circumstances, we find that the Navy's award of the contract to SWM was proper and that, under DAR § 1-703(b)(1)(c), the Navy properly referred Triple "A"'s protest to the SBA for consideration in connection only with future procurement actions. Accordingly, we see no reason to recommend that the existing contract should be disturbed.

With respect to the exercise of the options under this contract, we find that it is a matter to be resolved by the Navy in accordance with applicable regulations. See DAR § 1-1500; Gallegos Research Corporation--Reconsideration, B-209992.2, B-209992.3, Nov. 21, 1983, 83-2 C.P.D. ¶ 597. The contract was properly awarded to SWM and the determination to exercise the options should be made in accordance with the DAR § 1-1500 criteria. Although the contract should not be continued as a small business contract, the exercise of options is not precluded if done in accordance with applicable regulations. Gallegos Research Corporation, Reconsideration, B-209992.2, B-209992.3, supra.

The protest is denied.

for Milton J. Fowler
Comptroller General
of the United States