

DECISION



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

FILE: B-219683 **DATE:** November 26, 1985
MATTER OF: Marine Hydraulics International,
Inc.

DIGEST:

1. Protest against cost evaluation of proposals is timely filed approximately 1 month after debriefing where record indicates that basic pricing information giving rise to protest was not given to protester at debriefing and record shows protester pursued diligently information underlying protest and filed protest within 10 working days after receipt of information.
2. Protest based on information which protester admits was known from debriefing filed more than 10 working days after debriefing is untimely.
3. GAO will not object to cost realism determination where agency calculated adjusted cost estimates by comparing each offeror's proposed costs to agency cost estimates for several sample work items, and relied generally on the quality of each offeror's support data to substantiate the offeror's cost estimate.
4. Where solicitation for work provided that option work would be evaluated for award, fact that protester, which did not submit low overall cost, allegedly submitted lower price for base period work is not significant.
5. The government is not required to equalize the competitive advantage of competing concerns where such advantage is based on incumbency and experience, and not the result of preference or unfair action by the government.

Marine Hydraulics International, Inc. (MHI), protests the Navy's award of a cost-plus-award fee contract to Metro Machine Corporation (Metro) for a maintenance program involving three vessels under request for proposals (RFP) No. N00024-85-R-8509, a total small business set-aside. The

033903

RFP, issued on January 30, 1985, informed offerors that proposals would be evaluated in the following categories in descending order of importance: (1) Management Capability; (2) Technical Approach; (3) Cost (including cost realism); and (4) Resources Availability.

On April 12, 1985, proposals were received from five offerors, including MHI and Metro. These proposals were then evaluated by the Navy. The Navy states that Metro received the highest evaluated score and that both Metro's "proposed cost and evaluated projected cost" were lower than the costs of any other offeror. After the Navy's cost evaluation, Metro's evaluated cost remained significantly lower than MHI's evaluated cost. The Navy further determined that no useful purpose would be served by conducting discussions and awarded the contract on the basis of initial proposals.

On July 3, 1985, the Navy informed all offerors that Metro was the successful offeror under the RFP. The Navy found Metro to be a "technically superior offeror, which also offered the lowest evaluated cost." On July 11, 1985, the Navy awarded Metro the contract at an estimated cost of \$31,881,253 compared with MHI's proposed cost of \$54,151,788. Thereafter, the Navy scheduled a debriefing on July 18, 1985, with MHI. At that time, the Navy discussed MHI's proposal with the company. The Navy says it gave MHI a thorough explanation of the strengths and weaknesses of MHI's proposal. The Navy says it also informed MHI that certain areas of its technical proposal contained major weaknesses. Specifically, as to the evaluation of MHI's proposed costs, the Navy says that it also informed MHI that: (1) the Navy reviewed the quality and sufficiency of all offerors' cost data support and estimating methodology; (2) offerors' work hours and material dollar estimates were compared with the "Government estimates for several sample work items as part of the cost realism analysis," as provided for in the RFP; and (3) "cost to the Government" score was based on evaluated costs, not proposed costs.

The Navy further says that at the end of the debriefing MHI requested "Government estimates for labor hours and material" by contract line item number. MHI also requested scoring information on Metro's technical proposal, weighing factors used for each evaluation factor and the results of the technical analysis and cost review. As a result of an August 1, 1985, telephone discussion between the Navy and the protester, the Navy sent MHI a copy of Metro's contract

according to the Navy's August 1 oral understanding of what MHI really wanted. Contrary to the Navy's August 1 understanding of what MHI wanted, MHI informed the Navy on August 7 that MHI "really wanted the Government estimates for the contract line items, not the contract award prices." After its August 7 telephone call with the Navy, MHI sent the Navy an August 7 letter which renewed MHI's earlier requests for information. The Navy then furnished MHI with a copy of pertinent parts of Metro's contract which showed the contract's basic pricing structure.

MHI then filed its protest with us on August 15, 1985. MHI contended: (1) Metro's proposed cost for some items is unrealistically low compared with MHI's estimate for the number of work hours and material costs involved in these items; further, this proposed cost for these items is so low that the Navy must not have fairly compared Metro's cost estimate to the government cost estimate so as to make proper cost adjustments to Metro's cost proposal; (2) MHI had a lower cost than Metro for the base period requirement (current fiscal year need) and thus should have received an award; and (3) the Navy's evaluation of MHI's proposal was inconsistent with the Navy's evaluation of MHI's proposal on an earlier procurement.

We deny the protest.

The Navy first argues that all of MHI's protest allegations are untimely filed with our Office.

The Navy notes that bases of protest (1) and (2), above, are essentially derived from a copy of Metro's contract which MHI ultimately obtained from the Navy in August. Given that the contract was public information and could have been obtained by MHI before the July 18 debriefing, the Navy argues that the protest was filed in August with our Office more than 10 working days after the basis of protest should have been known and that, therefore, the protest is untimely filed. Alternatively, the Navy argues that it provided sufficient information to MHI at the July 18 debriefing so as to put MHI on notice of these bases of protest.

It is well-settled that a protester must pursue diligently information that forms the basis of protest, Cove Shipping, Inc., B-215864, Oct. 19, 1984, 84-2 C.P.D. ¶ 423, and that a protester may delay the filing of its protest

until after a debriefing when the information available earlier left uncertain whether there was any basis for protest. Trellclean, U.S.A., Inc., B-213227.2, June 25, 1984, 84-1 C.P.D. ¶ 661.

The Navy's argument that the pricing information in Metro's contract was publicly available in early July does not take into account that MHI was obviously trying to obtain the broadest information it reasonably could before determining whether it had a possible basis of protest on cost grounds. As of the date of award in early July, MHI apparently only had suspicions about a possible basis of protest on cost considerations given the wide variation between its proposed cost and Metro's cost. Although MHI could have requested a copy of Metro's contract at that time to obtain line item pricing information, we think the company acted reasonably by alternatively requesting a debriefing in the hopes of obtaining greater information than would be revealed in a mere copy of the contract.

Although the Navy insists that it provided "releasable information relating to the evaluation" of the cost proposals, we see no evidence in the record that the Navy furnished Metro's contract pricing by line item until it sent MHI a copy of Metro's contract. Without this information, MHI would not have been in a position to file grounds of protest (1) and (2) of its above protest (alleging that Metro's cost proposal incorrectly was determined cost realistic by the Navy and that MHI should have received the award because its base year costs were lower than Metro's), which are based on the details of Metro's contract. MHI evidently thought it was still possible to obtain some insight into the government's cost evaluation process even after the debriefing--otherwise it would not have requested, in writing, the detailed information that it did of the Navy at the end of the debriefing. Again there is no evidence in the record that the Navy provided this specific information to MHI at the debriefing. In these circumstances, we cannot conclude that MHI was acting other than in diligent pursuit of the detailed information concerning Metro's cost proposal and the Navy's cost evaluation of Metro's proposal. We thus conclude that MHI timely filed its protest concerning issues (1) and (2), above, on August 15, 1985, after it received the Metro contract on or after August 7, 1985.

However, we find untimely MHI's protest that the Navy's evaluation of MHI's proposal was inconsistent with the Navy's evaluation of its proposal under a prior procurement.

MHI acknowledges that it was on notice of this basis of protest no later than the debriefing when it was allegedly "advised [by the Navy in a manner] totally inconsistent as to the positive aspects of its proposal" compared with the Navy's advice about the technical merits of its proposal on an earlier similar procurement. There is no indication in the record that MHI lacked sufficient information on the allegation of inconsistency as of the debriefing. Consequently, MHI should have filed its protest concerning this issue at our Office within 10 working days of the debriefing. Since MHI did not file this ground of protest timely, we dismiss this aspect of MHI's protest.

MHI questions the Navy's evaluation of the awardee's cost proposal. The contracting agency's judgment in evaluating cost is entitled to great weight, since the agency is in the best position to determine the realism of proposed costs and must bear the major criticism for cost overruns caused by a defective cost analysis. Lockheed Corp., B-199741.2, July 31, 1981, 81-2 C.P.D. ¶ 71. Thus, we will not second-guess an agency's cost evaluation unless it is not supported by a reasonable basis. Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 C.P.D. ¶ 677.

Based on our review of the record as discussed below, we cannot question the Navy's selection of Metro.

MHI's allegation concerning Metro's cost proposal is that the cost proposal is unrealistically low and that, accordingly, the Navy must not have conducted a thorough cost realism analysis of the proposal as is contemplated by paragraph 5.3 of attachment 1 to Section "h" of the RFP which provides:

"The [Navy] will perform a technical analysis and review of the offeror's cost data, including comparison to the Government estimate for the specification work package. This analysis will be performed both on a sample of the work items and on the offeror's total proposal. . . ."

MHI specifically focuses on contract item 0017 ("Accomplish Advance planning, repair and modernization of USS Spartanburg County") and argues that Metro's award price (\$1,894,500) for this item "does not even cover its direct cost and material purchases required."

As to MHI's argument that the Navy did not use an independent cost projection for Metro's entire cost proposal, the Navy asserts that "workhours and material dollar estimates proposed by each offeror were compared to Government estimates for several sample work items," which were then used to calculate adjusted cost estimates for each offeror's total proposed cost. The adjusted cost estimates for each offeror's total cost were used in determining the best value to the Navy. Since the record indicates that the Navy performed a cost analysis on a sample of the work items and the offeror's total proposal, we find that this approach was consistent with paragraph 5.3, above.

In this case, the Navy specifically advises that it intentionally did not want to place undue reliance on the government estimate because it anticipated that some offerors could perform adequately in fewer hours than the government estimated, but instead preferred to rely on the quality of the offerors' support data and rationale submitted to substantiate the offerors' cost estimate.

Regarding item 0017, the Navy reports that while the item was not specifically compared with the government estimate, it nonetheless was evaluated for cost realism by the Navy. The Navy points out that this item covered non-drydock work and that non-drydock work costs were evaluated using a mathematical factor applied to offerors' estimates. The Navy further advises that although Metro's proposed cost for this work appears low, the non-drydocking work under this item had a short period of performance and Metro's proposed cost for accomplishing this work was consistent with its estimates for other short non-drydocking work.

Given our basic principle that the contracting agency's judgment in evaluating cost is entitled to great weight and the Navy's above explanation of Metro's cost for item 0017, we are not in a position to question the Navy's cost evaluation of item 0017 even though the Navy apparently did not compare Metro's proposed cost for this item to a government cost estimate for the item.

Next, MHI claims that it had a lower cost for the base period (current fiscal year) and, therefore, should have received the award. But, as the Navy points out, the RFP provided that option items would be evaluated along with the base period requirements for purposes of award. Consequently, there is no merit to this basis of protest.

Finally, MHI expresses its concern that award to Metro here in addition to other awards it has received previously give Metro an unfair competitive advantage over MHI and other small business offerors on future solicitations.

Our Office has recognized that certain firms may enjoy a competitive advantage because of their own incumbency or their own particular circumstances. Such an advantage is unfair only where it results from a preference or unfair action by the government. Holmes & Narver Services, Inc., B-208652, June 6, 1983, 83-1 C.P.D. ¶ 605. Since we cannot conclude the award was improper, we reject this ground of protest.

The protest is denied in part and dismissed in part.

The protester has requested that it be awarded proposal preparation costs. In view of our finding that MHI's protest is without merit, the claim is denied. Ion Exchange Products, Inc., B-218578, B-218579, July 15, 1985, 85-2 C.P.D. ¶ 52.

for Seymour Efron
Harry R. Van Cleave
General Counsel