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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Norfolk Shipbuilding & Drydock Corporation
File: B-219988.7
Date: September 26, 1986

DIGEST

Claim for proposal preparation costs and costs of pursuing protest is denied where there is no showing that the government acted arbitrarily or capriciously with respect to the claimant's offer.

DECISION

Norfolk Shipbuilding and Drydock Corporation (Norfolk) has submitted a claim for proposal preparation costs and the costs of pursuing its protest, including attorney's fees, following our denial in part and dismissal in part of its protest, and our denial of its claim for costs, in Norfolk Shipbuilding and Drydock Corp., B-219988.3, Dec. 16, 1985, 85-2 C.P.D. ¶ 667.

We deny the claim.

Norfolk had protested the termination of its contract No. DAAK01-85-C-B250, awarded by the Army Materiel Command (AMC) for the construction of four vessels. AMC had terminated Norfolk's contract because of uncertainty whether the solicitation purchase description adequately reflected the agency's needs. We found no basis to question AMC's decision to terminate the contract. We also dismissed as premature Norfolk's additional protest basis that AMC would not change the government's requirements when it issued a revised solicitation. In view of our decision denying in part and dismissing in part Norfolk's protest, we denied its claim for proposal preparation costs and the costs of filing and pursuing its protest.

Norfolk now seeks to recover proposal preparation costs, and the costs of filing and pursuing its protest, because the Army has transferred the procurement to the Navy's Military

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Sealift Command (MSC), which has issued a solicitation Norfolk considers substantially different from the one under which Norfolk was originally awarded a contract. Norfolk contends that it cannot recover its proposal costs incurred in responding to the original Army solicitation, which required vessel design, by responding to the Navy solicitation, which requires the supply of existing vessels. Norfolk asserts that the ability to engage in a recompetition was crucial to our earlier denial of its claim for proposal preparation costs.

The Army reports that it transferred the procurement to the Navy's MSC because of the Navy's obvious expertise in buying vessels, and its ability to award a contract before the end of the fiscal year, when funds for the procurement would expire. The Army states that the ships remain an Army requirement although the Navy is doing the actual purchasing, and that the specification has been changed to reflect the Army's current needs. The Army enumerates five major differences between the new specification and that which was in Norfolk's contract as follows:

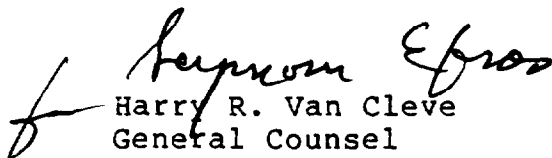
1. The previous specification called for the logistics support vessel to carry both liquid and dry cargo. The current specification requires dry cargo only.
2. The previous specification called for new vessels or conversions of existing vessels; the current requirement is for existing vessels delivered after 1967.
3. The crew size was 29 and is now 20.
4. The minimum deck area was 10,000 sq. ft. and is now 8,000 sq. ft.
5. The ship speed was 12 knots and is now 10 knots.

A prerequisite to entitlement to proposal preparation costs as a result of cancellation of a solicitation (and termination of the resultant contract) is a showing that the agency's actions with respect to the claimant's offer were arbitrary or capricious. See John C. Kohler Co., B-218133, Apr. 22, 1985, 85-2 C.P.D. ¶ 460. We concluded in Norfolk Shipbuilding and Dry Dock Corp., B-219988.3, supra, that the Army's decision to terminate Norfolk's contract for the convenience of the government was reasonable in light of the

Army's need to revise solicitation specifications to reflect its actual needs. The recovery of proposal preparation costs was accordingly inappropriate. Similarly, since we determined the solicitation cancellation was proper, Norfolk did not qualify for the reimbursement of its cost of pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d) and (e) (1986); see Manufacturing Sciences Corp., B-220567, Dec. 24, 1985, 85-2 C.P.D. ¶ 712. The ability of Norfolk to engage in a recompetition played no part in our decision to deny its claim for costs, contrary to Norfolk's assertion.

We also dismissed as premature Norfolk's protest that AMC would issue a revised solicitation which would be similar to the cancelled solicitation and would not reflect changes in the government's requirements, since AMC had not yet issued a revised solicitation. Norfolk's present assertion that the solicitation issued by the Navy is substantially different from that under which it was awarded a contract only serves to support the Army's position that revised specifications were required to reflect changes in the government's actual needs.

The claim is denied.


Harry R. Van Cleve
General Counsel