



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Newport News Shipbuilding and Dry Dock
Company--Request for Reconsideration
File: B-221888.2
Date: October 15, 1986

DIGEST

Arguments presented by an agency in its request for reconsideration of a decision will not be considered where the agency failed to present such arguments at the time of the protest, and the information which forms the basis for the arguments was available at that time.

DECISION

The Department of the Navy requests reconsideration of our decision in Newport News Shipbuilding and Dry Dock Company, B-221888, July 2, 1986, 86-2 C.P.D. ¶ 23, in which we denied in part and sustained in part Newport News Shipbuilding and Dry Dock Company's (NNS) protest of the Naval Sea Systems Command's (Navy) January 24, 1986, request for proposals (RFP) for the overhaul of two nuclear submarines. We affirm our decision.

In our previous decision, we noted the unique nature of the competition in that it was between a public shipyard (Charleston Naval Shipyard) and a private one (NNS). We then sustained NNS's protest against the Navy's use of lowest target price as the sole evaluation criterion. We agreed with NNS that the government would pay for any cost overruns by the public shipyard from public funds, and we found the reimbursement arrangement with the public shipyard to be more closely analogous to a cost-reimbursement type contract than the fixed-price contract NNS was bound to perform, in which the government is legally obligated to pay the private contractor no more than the ceiling price. We held that the Navy should have conducted some type of cost realism analysis of the public shipyard's proposal.

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We pointed out that the Secretary of the Navy was required under Pub. L. No. 99-190, in which the Congress appropriated funds to acquire the overhaul by public-private shipyard competition, to certify that the successful bid included comparable estimates of all direct and indirect costs for both public and private shipyards, and we noted that the individual elements of the bid estimates prepared by the public shipyard were not reviewed to ascertain whether they were reasonable. We acknowledged that an audit firm reviewed the public shipyard's bid estimate to ascertain how it was prepared and what elements it contained, but we noted that the audit made no judgment or review of the reasonableness or quantum of these elements. It was our view that Pub. L. No. 99-190 envisioned more than an unverified bid estimate by the public shipyard, in view of the nature of the public-private competition. We did not believe the estimate for the public shipyard could be deemed comparable under Pub. L. No. 99-190 unless its elements were reviewed as to reasonableness to determine if they were in line with independent government estimates. We concluded that a certification by the Navy without a proper verification that the elements of the public shipyard's estimate were reasonable would render the purpose of the certification meaningless. Since the protest had merit in part, we declared that NNS was entitled to recover its costs for filing and pursuing the protest, including attorney's fees.

In a letter dated July 17, 1986, the Navy for the first time asserts that before assigning the overhauls to the public shipyard, it did, in fact, conduct a cost realism analysis. According to the Navy, it reviewed costs for all of the work requirements for each vessel. For the overhaul on which NNS made an offer, the Navy asserts that appropriate technical personnel specifically reviewed the costs proposed by NNS and Charleston for 171 of the Ship Work Line Item Numbers (SWLINS), which represented about 85 percent of the non-nuclear work effort. These costs were compared with the most recent cost experience of NNS and Charleston for the applicable SWLIN to make certain that the proposed costs were reasonable and realistic. Similar analyses were performed on proposed costs for nuclear work. Since the Navy believes it performed the type of cost realism we envisioned, and as the protest was otherwise denied, the Navy considers the payment of protest costs to be inappropriate.

At the outset, we point out that the Navy has not provided any supporting documentation for its latest assertion that it conducted the type of cost realism analysis we envisioned. In February 1986, the Navy answered "No" to the offeror's question "will the Navy conduct a cost realism analysis?"

The Navy offers no explanation as to the inconsistency concerning this advice to offerors in February and its most recent statement to us that it performed a cost realism analysis. The Navy states that it did not provide details of its analysis while the protest was pending because NNS did not take issue with the adequacy of its review of the proposals or with its determination that the public shipyard's proposal was reasonable and contained cost elements comparable to private shipyard costs. We disagree. The comparability of proposed costs clearly was in issue in the protest and, in our view, the realism of proposed costs is an obvious and necessary factor in a comparability determination. Our review of the record showed the Navy did not conduct a cost realism analysis and, in fact, at the time we decided the protest, the Navy's position was that it was not required to do so.

In any event, we consistently have stated that our Office will not reconsider a prior decision where an agency bases its reconsideration request on information it could have presented during our initial consideration of the protest, but chose not to do so. Griffin-Space Services Co., 64 Comp. Gen. 64 (1984), 84-2 C.P.D. ¶ 528; Swan Industries--Request for Reconsideration, B-218484.2, B-218485.2, May 17, 1985, 85-1 C.P.D. ¶ 569. The goal of our bid protest forum--to produce fair and equitable decisions based on consideration of both parties' arguments on a fully developed record--otherwise would be undermined. See Department of the Navy--Request for Reconsideration, B-220991.2, Dec. 30, 1985, 85-2 C.P.D. ¶ 728.

Here, reversal of our position in our prior decision is not warranted. The decision therefore is affirmed and NNS is entitled to the costs of filing and pursuing its protest, including reasonable attorney's fees. 31 U.S.C. § 3554(c) (Supp. III 1985).

for Harry R. Van Cleave
Comptroller General
of the United States