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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Hoboken Shipyards, Inc.  
File: B-224184.2  
Date: January 20, 1987

## DIGEST

1. Protest alleging improprieties in a solicitation issued under the Pub. L. No. 99-190 test program for overhaul of Navy vessels falls within the definition of a protest in the Competition in Contracting Act, and therefore is appropriate for consideration by General Accounting Office.
2. Protest that agency evaluation of public shipyard's estimated cost of performance as low is unreasonable is denied where agency conducted an analysis, which record does not show was wrong, to ensure that the public shipyard's cost estimate was reasonable and contained cost elements comparable to private shipyard costs and, based on that analysis, public shipyard's estimated cost of performance remained lower.

## DECISION

Hoboken Shipyards, Inc. (HSI), protests the Department of the Navy's determination to assign the overhaul of the USS Clifton Sprague to the Philadelphia Naval Shipyard (PNSY). The assignment was made after a competition between PNSY and various private shipyards under request for proposals (RFP) No. N62678-86-R-0089. The private versus public shipyard competition is a test program authorized by Congress under Title II of the Department of Defense Appropriations Act for fiscal year 1986, Pub. L. No. 99-190. HSI contends that the assignment to PNSY is improper because the Navy failed to evaluate properly the realism of the costs proposed by PNSY as required by the legislation.

We deny the protest.

## BACKGROUND

The RFP was issued on July 3, 1986, to PNSY and four private shipyards. Offerors were required to submit firm, fixed prices for the overhaul work, and a man-day rate to perform

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3,215 man-days of labor for other work that the Navy was certain would develop. The RFP indicated that each offeror's evaluated price would be the offered price for the overhaul work plus the amount added by the additional requirements. Also, the RFP indicated that the Navy would consider in the evaluation the foreseeable cost of moving the vessel from its homeport in Philadelphia to the offeror's site. Award would be made to the responsive, responsible offeror whose total offer was most advantageous to the government, price and other factors considered.

The Navy received three proposals by the RFP's closing date of August 7. Discussions were held with all offerors on August 14, and best and final offers (BAFOs) were required by August 20. A second round of discussions was initiated on September 4, and revised BAFOs then were submitted. The final proposed prices of PNSY and HSI were as follows:

	PNSY	HSI	
Basic Price	\$4,452,413	\$5,431,355	
Additional Requirements	622,167	756,168	
Foreseeable Costs	-	38,500	
Total	\$5,074,580	\$6,226,023	-

Under Pub. L. No. 99-190, the Secretary of the Navy is required to certify prior to the award of any contract that "the successful bid includes comparable estimates of all direct and indirect costs for both public and private shipyards." The Navy performed a reasonableness/cost realism evaluation of PNSY's estimated cost of performance<sup>1/</sup> and both PNSY's and HSI's evaluated prices were adjusted to arrive at comparable estimates. As a result of the evaluation, PNSY's estimated cost of performance remained low, and after certification by the Secretary of the Navy as to the price comparability of the proposals, PNSY was selected as the successful offeror. HSI protested the selection on September 19 and, after determining that urgent and compelling circumstances significantly affecting the interests of the United States were present, the Navy authorized performance on September 26 notwithstanding HSI's protest.

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<sup>1/</sup> PNSY's offer is more closely analogous to a cost reimbursement type offer rather than the fixed price offer submitted by HSI, since the government is not legally obligated to pay HSI more than the offered price while the government will pay for any cost overruns by PNSY from public funds.

## JURISDICTION

The Navy argues that our Office lacks jurisdiction to consider this protest since the assignment of a ship overhaul project to a public shipyard is a matter of executive discretion not subject to our review. The Navy also contends that consideration of this protest is not within the scope of authority granted our Office under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551(1) (Supp. III 1985). Although both these jurisdictional arguments were expressly considered and rejected in our decision in Newport News Shipbuilding and Dry Dock Co., B-221888, July 2, 1986, 86-2 CPD ¶ 23, the Navy alleges that the decision was in error and that the protest should be summarily dismissed.

As we indicated in the cited decision, where the procurement system is utilized by an agency to determine whether work should be performed in-house or by a private contractor, we will review the procurement to determine whether the agency complied with applicable laws and regulations. Such an exercise of jurisdiction is clearly consistent with past practices, see, e.g., Joule Maintenance Corp., B-208684, Sept. 16, 1983, 83-2 CPD ¶ 333, and we find nothing in CICA which restricts our authority to consider protests under such circumstances. Contract Services Co. Inc., 65 Comp. Gen. 41 (1985), 85-2 CPD ¶ 472. The Navy has presented no additional arguments to support its position and, in accordance with our prior decision, we will consider the merits of the allegations raised by HSI.

## COST COMPARABILITY DETERMINATION

HSI argues that the \$1 million difference between its proposal and that of PNSY raises serious questions as to whether PNSY's estimate is realistic. HSI has not been provided a detailed breakdown of PNSY's cost estimate or of the Navy's cost analysis, but notes that it was advised during discussions that HSI's labor estimate was significantly less than the government's estimate. PNSY's labor estimate was not criticized by the Navy and, consequently, HSI argues that PNSY's labor estimate must have been higher than HSI's. PNSY's evaluated price, however, still was substantially less than HSI's so that, HSI contends, PNSY must have significantly underestimated material costs, overhead or some other cost element. HSI argues that given the cost differential, the Navy must not have evaluated the reasonableness of PNSY's estimate properly.

The Navy asserts that it did evaluate PNSY's proposed price to ensure that all costs expected to be incurred due to the ship

overhaul were included. PNSY's proposed labor hours and material costs were compared to the government's estimate, and PNSY's direct labor and overhead rates were evaluated to ensure that all expected costs were included. The Navy indicates that various aspects of PNSY's labor and overhead rates were questioned and, on the basis of PNSY's BAFO and response to the Navy's inquiries, the Navy concluded that PNSY would recover all of the costs associated with the overhaul.

The Navy indicates that in addition to ascertaining whether PNSY reasonably could be expected to perform at its proposed price, a comparability evaluation was conducted to ensure that comparable cost elements were contained in both proposals. Based on this analysis, the costs of additional military personnel, facility depreciation, workmen's compensation, unemployment compensation and the administrative project office function were added to PNSY's estimated price, while certain administrative costs were identified and added to HSI's price. Overall, the Navy found that HSI had subcontracted a portion of its labor effort and that HSI's combined material and subcontract costs substantially exceeded the costs proposed by PNSY in this area. While there were differences in the remaining cost categories, the Navy states that PNSY's costs were found realistic. PNSY was selected for the work because its estimate remained low after the comparability analysis.

In Newport News Shipbuilding and Dry Dock Co., B-221888, supra, we recognized that in contrast to the private shipyard, which absorbs any cost overruns from its own corporate funds, the government will bear the additional costs incurred because of an unrealistically low estimate submitted by a public shipyard. As a consequence, we recommended that a cost realism analysis be conducted so that the comparability certification required by statute is based on a reasoned judgment of the actual cost to the government. Such an analysis, however, is in essence an informed business judgment on the part of the contracting agency. Marine Design Technologies, Inc., B-221897, May 29, 1986, 86-1 CPD ¶ 502. The procuring agency's judgment as to the methods used in estimating costs and the conclusions reached in evaluating proposed costs are given great weight by our Office, since the agency is in the best position to determine whether the proposed costs are realistic. Institute for Advanced Safety Studies, B-221330, Apr. 16, 1986, 86-1 CPD ¶ 372. Consequently, we will disturb an agency's cost realism determination only if we find it to be unreasonable.

In our view, the analysis performed by the Navy here provides a reasonable basis for its conclusion that award to PNSY is in the best interests of the government based on its estimated lower cost. As indicated above, the record shows that the Navy reviewed all aspects of PNSY's cost estimate. Both PNSY's and HSI's man-day estimates were below the government's estimate, although PNSY's estimate was significantly greater than that offered by HSI. HSI's assertion that because PNSY's man-day estimate is substantially higher than the protester's PNSY's other estimated costs must be unreasonably low does not take into account the fact that the reason HSI's man-day estimate is lower is that the firm planned to subcontract a portion of the work. In addition, PNSY's material estimate was not substantially below the government's estimated cost for materials for this contract. While PNSY's proposed overhead cost and labor rate were below that offered by HSI, the Navy analyzed these two aspects of PNSY's proposal and adjusted the cost estimates upwards in these areas to reflect the amounts the Navy believed would reasonably be expected. The Navy concluded that after taking into account all of the incremental direct and indirect costs associated with this contract, PNSY would perform at a lower price. Based on the record provided our Office, we cannot conclude that this determination is unreasonable.

Finally, we note that HSI complains the Navy has improperly refused to provide HSI with the records that support the Navy's analysis of PNSY's cost estimate. The Navy argues that because the same shipyards may be involved in several allocation decisions over the year, disclosure of the cost information to the private sector will impair all future competitions involving that public shipyard. We point out that the authority to determine what documents should be released to a protester is vested in the contracting agency, not our Office. See 31 U.S.C. § 3553(f); Newport News Shipbuilding and Dry Dock Co., B-221888, supra. Consistent with our practice, however, we have reviewed and base our decision on the entire record, not merely those portions that have been provided to the protester. S&O Corp., B-219420, Oct. 28, 1985, 85-2 CPD ¶ 471.

The protest is denied.

*for Seymour E. ...*  
Harry R. Van Cleve  
General Counsel