



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Norden Systems, Inc.

File: B-227106.9

Date: August 11, 1988

DIGEST

1. The fact that there is a large discrepancy between the price totals in the contract documents provided to the protester and the price totals in the contract actually awarded provides no basis to invalidate the contract awarded, where: (1) the agency mistakenly sent inaccurate contract documents to the protester, and (2) the awardee's proposal was evaluated and the contract awarded on the basis of the price totals set forth in the awardee's best and final offer.

2. The contracting agency properly modified the awardee's contract to correct a mistake in the price totals contained in the contract, where: (1) it was clear from the line item prices what the intended price total should have been; (2) the correct price total corresponding to the sum of the unit prices was set forth elsewhere in the contract, and (3) both the uncorrected and corrected price total were lower than the protester's total prices.

3. Neither the allegation that a below-cost offer has been submitted, nor a competitor's speculation that the contracting agency might try to exercise the contract options in an untimely manner, allowing the awardee to charge the government more than the fixed prices proposed for those options, provides a basis to challenge the validity of a contract award.

4. Cost realism generally is not considered in evaluating proposals for a fixed-price contract. Whether an agency requests the submission of detailed cost data and conducts a cost realism analysis for the purpose of measuring an offeror's understanding of the requirements in a procurement for a fixed-price contract is a matter within the contracting officials' discretion.

DECISION

Norden Systems, Inc., protests award of a contract to Sperry Marine, Inc., by the Department of the Navy pursuant to request for proposals (RFP) No. N00024-86-R-5664(Q). The

042972/134550

contract calls for Sperry Marine to design, develop, fabricate, test and evaluate a radar system for use on submarines. The full term of the contract, if all options are exercised, is 6 years. The contract is a combination of a fixed-price incentive contract during the full scale development phase (the base year and first 2 option years) and a firm, fixed-price contract during the production phase (the last 3 option years).

We deny the protest in part and we dismiss it in part.

BACKGROUND

The solicitation was issued on November 4, 1986, and five proposals were received by the closing date for receipt of initial proposals. After evaluating best and final offers, the Navy determined that Norden's proposal was the most advantageous to the government, price and other factors considered, and awarded the contract to that firm on April 29, 1987.

Sperry Marine and Aydin Radar & E.W. Division filed protests in our Office on May 7, 1987. The firms alleged that the award to Norden was improper, because the Navy had modified certain mandatory performance specifications set forth in the RFP in order to make award to Norden, but the Navy did not amend the solicitation and give offerors other than Norden an opportunity to revise their proposals on the basis of the relaxed performance requirements.

We sustained the protests on September 14, 1987. See Sperry Marine, Inc.; Aydin Radar & E.W. Division, B-227106, et al., Sept. 14, 1987, 87-2 CPD ¶ 241. We recommended that the Navy reopen the competition by issuing an amendment informing all offerors of its actual needs and allowing them to revise their proposals in another round of best and final offers. We further recommended that, if Norden lost the reopened competition, the Navy should terminate Norden's contract and award a new contract to the winner of the reopened competition. The September 14 decision on the initial protest was reconsidered and affirmed by our Office in Norden Systems, Inc., et al., B-227106.3, et al., Oct. 16, 1987, 87-2 CPD ¶ 367.

Based upon our decision on the Sperry Marine and Aydin Radar & E.W. Division protests, the Navy issued an amendment and reopened the competition on October 28, 1987. Revised best and final proposals were submitted by four of the original offerors on December 14, 1987. Navy evaluators determined that Sperry Marine's proposal was the highest rated on technical factors, offered the lowest evaluated price, and merited the highest overall weighted score. Therefore, on

April 12, 1988, the Navy awarded the contract to Sperry Marine. On April 21, Norden filed the present protest in our Office.

PRICE DISCREPANCIES

Norden contends that the Navy erroneously evaluated Sperry Marine's proposal on the basis of price figures that were "many millions of dollars" below the prices actually stated in Sperry Marine's contract. Norden points out that there are a number of discrepancies between the prices quoted by the Navy in its April 12 letter notifying Norden of the award to Sperry Marine and the prices actually set forth in the portions of Sperry Marine's contract provided to Norden by the Navy. The following table depicts the disparities noted by Norden:

	<u>April 12 letter</u>	<u>Sperry Marine Contract</u>
Base Year	\$ 5,282,991	\$ 5,658,629
Option I	1,951,376	2,001,958
Option II	734,543	919,395
Option III	8,028,299	11,571,251
Option IV	5,939,629	8,237,231
Option V	6,055,146	8,512,436
Total	<u>\$27,991,984</u>	<u>\$36,900,900</u>

Norden believes that Sperry Marine's proposal was evaluated using the figures set forth in the April 12 letter but that Sperry Marine will actually be entitled to recover the amounts shown in its contract--almost \$9 million more. Norden notes that its own total evaluated price of \$30,654,097 was more than \$6 million lower than the \$36,900,900 total price in Sperry Marine's contract, and, therefore, Norden believes the Navy should have determined that Norden's proposal was the most advantageous to the government.

We do not agree with Norden's analysis. The Navy reports that the real mistake it made was that it gave Norden copies of contract documents that quite simply are not accurate. According to the Navy, the contract negotiator, in responding to Norden's request for a copy of Sperry Marine's contract, inadvertently neglected to include several changed pages that had been submitted by Sperry Marine as part of its last best and final offer.^{1/} Because of this clerical

^{1/} When the competition was reopened, the Navy requested two best and final proposals; the first was due on December 14, 1987, and the last best and final proposal was due on February 29, 1988.

error, the contract documents provided to Norden were inaccurate in that they erroneously included several pages from Sperry Marine's earlier proposals. However, the Navy has assured our Office that the evaluation of Sperry Marine's proposal and the award decision were based upon the figures actually contained in Sperry Marine's best and final proposal.

The Navy also has provided our Office with documents that show that the prices quoted in its April 12 letter to the protester are the exact prices set out in the contract awarded to Sperry Marine. Thus, Sperry Marine's total evaluated price was \$27,991,984, or \$2,662,113 less than Norden's total evaluated price. In view of the fact that the evaluation and award were based upon the figures actually contained in Sperry Marine's last best and final offer, the Navy's error in providing Norden with an inaccurate copy of Sperry Marine's contract pricing documents does not affect the validity of the award.

Next, the protester points out that the summary totals on page 17 of the contract pricing documents are significantly higher than the total of the prices for the individual line items set forth on pages 2 through 16 of the contract. The protester contends that this discrepancy somehow invalidates the award.

The Navy and Sperry Marine acknowledge that the page 17 summary totals submitted with Sperry Marine's last best and final offer do not equal the total of the individual line items set forth on pages 2 through 16 of that best and final. At a conference on the protest, Sperry Marine explained that it had erroneously failed to change page 17's summary prices in its February 29 best and final proposal to reflect price reductions made to line item prices contained in pages 2 through 16 of that best and final offer. Therefore, Sperry Marine's February 29 best and final offer mistakenly included the summary totals (page 17) from Sperry Marine's December 14 offer. Neither Sperry Marine nor the Navy noticed this discrepancy until it was protested by Norden. Then, the Navy unilaterally modified Sperry Marine's contract after confirming the error with Sperry Marine to correct downward the page 17 summary price totals.

The discrepancy between the summary totals and the line item prices provides no basis for invalidating Sperry Marine's contract. The record shows that: (1) the correct summary totals were contained on page 158B of Sperry Marine's best and final offer; (2) the summary totals at page 158B of the proposal corresponded to the prices set forth for individual line items on pages 2 through 16; and (3) the Navy did use the proper figures in evaluating the proposal. Furthermore,

the RFP contained the clause in Federal Acquisition Regulation (FAR) § 52.215-13 (FAC 84-17), which directs generally that unit prices are presumed to be correct where an offer contains a discrepancy between unit and extended prices. We note that even Sperry Marine's uncorrected summary total prices, though higher than the intended total prices, were lower than Norden's proposed price totals. Thus, as it was apparent from the line item prices contained in Sperry Marine's offer what the correct summary totals should have been, and as the error did not affect the evaluation, we find no fault in the Navy's correcting the contract to reflect the extended prices actually intended by Sperry Marine. See S.C. Jones Services, Inc., B-226972, June 10, 1987, 87-1 CPD ¶ 583.

BUY-IN

Norden contends that Sperry Marine is attempting to buy-in to the Navy's radar system program during the development phase by making a below-cost offer, and that Sperry Marine will attempt to "get well" during the production phase. The protester argues that reopening the competition gave Sperry Marine an opportunity to lower its proposed prices to unrealistic levels in order to win the competition. The protester states that Sperry Marine did not revise its technical proposal to take advantage of the relaxed performance requirements, but merely offered the same technology it had originally proposed at a price reduction of approximately \$9 million. Norden argues that Sperry Marine will not be obligated to provide the production quantities required in the option years of the contract at the fixed prices it proposed, because the unusual nature of the contract schedule may cause the Navy to exercise the options in an untimely manner. According to Norden, the contract schedule requires the Navy to exercise the first production option before Sperry Marine is required to complete first article testing. Norden reasons that, if the Navy waits for Sperry Marine to complete first article testing before it exercises the first production option, then the option will have expired and the low fixed prices will no longer bind Sperry Marine.

The allegation that a below-cost offer has been submitted does not in itself provided a basis to challenge the validity of a contract award. Wylie Mechanical, B-228695, Oct. 27, 1987, 87-2 CPD ¶ 407. Moreover, the scenario that Norden has described, wherein the Navy might try to exercise the first production option after it has already expired, is mere speculation on Norden's part. It is entirely possible that Sperry Marine will have completed first article testing before the last day required in the contract, or that the first article testing will be sufficiently completed by that

date to allow the Navy to make an informed decision as to whether to order the first production quantity, or the Navy could choose to exercise the option in a timely manner without regard to completion of the first article testing. In any event, as the argument presented by Norden is speculative at best, this protest issue is dismissed.

COST EVALUATION

The protester contends that the Navy should have done a thorough cost evaluation of Sperry Marine's proposal. According to Norden, had such an evaluation been conducted, the Navy would have realized that Sperry Marine's target prices were unrealistic and illusory; the Navy would have recognized that Sperry Marine's proposal did not represent the lowest evaluated cost; and the Navy would have awarded the contract to Norden because its proposal was truly the most advantageous offer to the government.

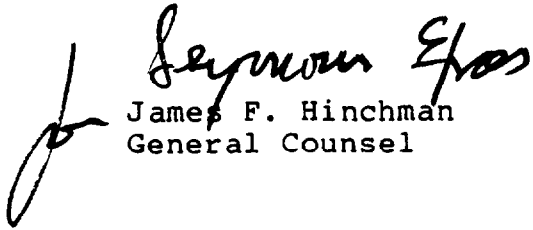
The RFP contemplated award of a fixed-price incentive contract for the development phase and a firm, fixed-price contract for the production phase. We have consistently stated that cost realism generally is not considered in the evaluation of proposals in response to a solicitation for a fixed-price contract. See, for example, Sperry Corp., B-225492, et al., Mar. 25, 1987, 87-1 CPD ¶ 341. Whether an agency requests submission of detailed cost data and conducts a cost realism analysis for the purpose of measuring an offeror's understanding of the requirements in a procurement for a fixed-price contract is a matter within the contracting officials' discretion. Id.

As Sperry Marine's technical proposal had undergone a thorough technical evaluation, the contracting officer reasonably did not need to conduct a cost realism assessment to ascertain that Sperry Marine understood the requirements. Furthermore, as five offerors had submitted proposals in the original competition before we recommended that the negotiations be reopened, and as the contracting officer determined that adequate price competition among the four remaining offerors existed, the contracting officer did not require submission of cost or pricing data. FAR § 15.804-3 (FAC 84-35). However, the contracting officer did perform a price analysis, comparing all offerors' prices, to ensure that the total price offered by Sperry Marine was fair and reasonable. See FAR §§ 15.805-1(b) and 15.805-2(a) (FAC 84-35). He noted that, as Sperry Marine's ceiling price was \$29,585,766 (while its actual evaluated price was \$27,991,984), the Navy's potential liability if Sperry Marine were awarded the contract was less than the potential liability if the contract were awarded to Norden, because Norden's ceiling price was \$31,709,295 (while its evaluated

price was \$30,654,097). In other words, because of the fixed-price nature of the contract and the ceiling prices proposed by the offerors, under any scenario the Navy would not have to pay Sperry Marine as much as Norden's minimum price.

CONCLUSION

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel