

S. Riback



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: New York Shipyard Corporation

File: B-247783.2

Date: April 9, 1992

Daniel R. Weckstein, Esq., Vandeventer, Black, Meredith & Martin, for the protester.

Janice M. Passo, Esq., Department of the Navy, for the agency.

Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest by third-low offeror is dismissed where firm is not an interested party under General Accounting Office's Bid Protest Regulations because it would not be in line for award if its protest against the selection of the low offeror were sustained; mere fact that agency has not yet performed preaward survey on second-low offeror and found firm to be responsible is insufficient to establish requisite direct economic interest on the part of the protester.

DECISION

New York Shipyard Corporation (NYS) protests the award of a contract to Philadelphia Naval Shipyard (PNSY) under request for proposals No. N62786-92-R-0001, issued by the Department of the Navy for the overhaul and repair of the USS Seattle (AOE-3). NYS argues that the Navy improperly evaluated the cost proposal of PNSY, a public shipyard, and thus improperly determined that it should receive award.

We dismiss the protest.

This acquisition was conducted as a public/private competition pursuant to the 1992 Department of Defense Appropriations Act, Pub. L. No. 102-172, 105 Stat. 1150 (1991). These competitions essentially require private firms to submit firm, fixed-price offers and public firms to submit cost estimates which are subject to adjustments for cost

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comparison purposes.¹ The solicitation provided for award to be made to the low technically acceptable offeror. In this case, NYS questions the propriety of the cost evaluation which was conducted prior to the Navy's award of a contract on the basis of initial offers to PNSY.

The Navy requests that we summarily dismiss the protest on the ground that NYS is not an interested party. Specifically, the Navy states that Phillyship, another private shipyard, has submitted a firm, fixed-price offer which is lower than the offer submitted by NYS. The agency maintains that since there is an intervening offeror and NYS is only the third-low offeror, it does not have the requisite economic interest within the meaning of our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1991), to maintain its protest. ECS Composites, Inc., B-233849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

NYS responds that it is an interested party to maintain the protest because the record in this case does not show that the Navy would in fact award a contract to Phillyship if NYS's protest against the award to PNSY were sustained. NYS notes that the Navy has not made a formal determination that Phillyship is a responsible offeror and claims that the agency ultimately may find Phillyship nonresponsible. NYS also points out that the Navy has not stated that it would make award to Phillyship without conducting discussions and soliciting best and final offers (BAFO). NYS believes that because of the closeness of the offers, negotiations would be reopened if its protest were sustained, and that therefore it is an interested party because it would then have the opportunity to submit the low technically acceptable offer. In addition, NYS speculates that its examination of all relevant documents in connection with its protest will reveal "other" bases of protest which, if raised, would require a recommendation of cancellation and resolicitation from our Office.

We agree with the Navy that NYS is not an interested party. The contracting officer reports that, based upon his understanding of Phillyship's facilities and capabilities, and taking into account Phillyship's prior performance of numerous overhaul and repair contracts, he has no reason to believe that the firm would not be found responsible. In any event, NYS's mere supposition that the Navy may not find Phillyship responsible is too tenuous to support a finding

¹For a detailed description of the requirements relating to the conduct of public/private competitions, see Newport News Shipbuilding and Dry Dock Co., B-221888, July 2, 1986, 86-2 CPD ¶ 23, aff'd., Newport News Shipbuilding and Dry Dock Co. --Recon., B-221888.2, Oct. 15, 1986, 86-2 CPD ¶ 428.

that it is an interested party to challenge the award to PSNY. Eastman Kodak Co.--Recon., B-220646.2, Mar. 24, 1986, 86-1 CPD ¶ 289.

Regarding NYS's arguments that the Navy would, because of the closeness of the offers, conduct discussions and solicit BAFOs from all offerors, and that NYS's review of documents in connection with the protest might reveal other bases for protest requiring resolicitation, we think these amount to mere speculation on the part of the protester. The record shows that the Navy evaluated all of the offers and concluded that there existed no cost or technical deficiencies. For this reason, it made award on the basis of initial offers. NYS has neither alleged nor demonstrated that the Navy's conclusion in this regard is erroneous; specifically, the protester has made no suggestion that the agency improperly determined Phillyship to be technically acceptable and otherwise eligible for award. We find NYS's mere speculation too tenuous to support a finding that it is an interested party. Id.

The protest is dismissed.



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