

01506



DECISION

T. Przybylski
Proc II
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187460

DATE: February 3, 1977

MATTER OF: San Diego Marine Construction Corporation

DIGEST:

Requirement that ship overhaul contractor furnish a report of estimated cost breakdowns for specification work items upon completion of work need not be specifically authorized by statute or regulation since it is reasonably related to Navy requirements for repair and overhaul of vessels, which is authorized by statute, and is not otherwise improper.

San Diego Marine Construction Corporation (SDMC) protests the inclusion in invitation for bids (IFB) No. N62791-76-C-0176 of Item 009-61, a provision requiring the contractor to provide a report of estimated cost breakdowns for various specification items upon completion of the contract requirement for the overhaul of the USS Bristol County. SDMC contends that the Navy's action is improper because: (a) the Navy has no affirmative statutory or regulatory basis to require the submission of estimated costs on advertised, firm fixed-price contracts; (b) the contractor is prohibited from recovering the cost of preparing the cost data; (c) the requirement is not mandatory on all Navy contracting activities; and (d) the disclosure of the data furnished under the disputed provision would be detrimental to the competitive bidding process.

The solicitation provision requires the contractor to "provide a report, upon completion of the contract period" of the estimated costs for specification work items broken down by direct labor, direct material, subcontract costs, and estimated total costs, including profit. The Navy reports that it requires the submission of this information because it is not provided by the bid price, which is an aggregate amount for all work items, but is needed by the Navy for planning and estimating the cost of future ship repair work.

The protester "does not dispute the Navy's need for" this data, but expresses concern over the absence of any specific statutory or regulatory authority pursuant to which the Navy can impose this requirement. In this connection, the protester refers to 10 U.S.C. § 7301 (1970) and Armed Services Procurement Regulation (ASPR) §§ 3-807.3(f) and 2-102.1(b) as authority for requiring submission of

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cost or pricing data in situations not applicable here, and implies that without some similar provision applicable to a formally advertised procurement for repair of a vessel the Navy cannot properly impose the requirement.

The protester's position is unsound. The statutory and regulatory provisions cited by the protester require the submission of cost or pricing data prior to and as a condition of award so that the contracting officer can determine that the contract will be awarded at a reasonable price. In this instance the submission of data is not imposed as a condition of award, but as a requirement of contract performance. In this regard, we have repeatedly held that the determination of an agency's needs is within the broad discretion vested in agency officials, see Julie Research Laboratories, Inc., 55 Comp. 374 (1975), 75-2 CPD 232 and cases cited therein, subject, of course, to the requirement that the procurement of such needs be consistent with the applicable authorization and appropriation statutes. See 54 Comp. Gen. 976 (1975); 53 id. 770 (1974); LTV Aerospace Corporation, 55 Comp. Gen. 307, 315-26 (1975), 75-2 CPD 203. Here it is not disputed that the Navy is authorized to expend appropriated funds for repair and overhaul of vessels, see the 1977 fiscal year Department of Defense Appropriation Act, Public Law 94-419, approved September 22, 1976, 90 Stat. 1279, and in our opinion the requirement for the cost data is reasonably related to the Navy's general requirements for ship repair. Accordingly, we find no basis to conclude that the Navy is without authority to require a contractor to submit the cost breakdowns as a part of contractual performance.

We also find no merit to the protester's other contentions. The contractor is not precluded from recovering the cost of furnishing the required data, as it may take such cost into account in computing its aggregate bid price. Paragraph 3-3 of Item 009-61, cited by the protester, which states that the "estimated cost for charge(s) to perform the foregoing shall be included in the estimate for the specification work and are not to be reported separately," does not preclude cost recovery; it merely relieves the contractor from having to submit a separate report on estimated costs for the preparation of the report required by Item 009-61. Moreover, the fact that not all Navy activities require the submission of such data does not establish that the requirement is improper, since individual contracting activities may determine their own reasonable requirements.

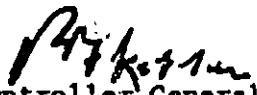
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With regard to the protester's final point, that the disclosure of data furnished under Item 009-61 would have a deleterious effect on the competitive bidding system, SPMC, argues that "full disclosure of bid data to anyone on sealed * * * bids destroys the whole concept of the bidding process" and that "proliferation of contractor cost data within government contracting agencies narrows the inherent difference between advertised and negotiated bids and is subject to possible abuse." We do not understand this contention since it is clear that the requirement would have no effect on award of the current contract and it is far from clear how a future competitive procurement would be adversely affected. In this regard, the Navy states:

"It is impossible to conceive how future awards could be affected by former contractor's reports. The information itself is adequately protected from disclosure to others by 18 U.S.C. 1905, and a possible future advertised contract will be awarded merely on the basis of bids and its underlying IPB."

We agree with the Navy.

The protest is denied.


Deputy Comptroller General
of the United States