Comptroller General
of the United States

Washington, D.C. 20548

402289

Decision

Matter of: Stevens Technical Services, Inc.

File: B-250515.2; B-250515.4; B-251877.2; B-251877.3

Date: May 17, 1993 93-1 CPD 385

Lars E. Anderson, Esq., Jerome S. Gabig, Jr., Esq., and William Craig Dubishar, Esq., Venable, Baetjer and Howard, for the protester.
Karen D. Powell, Esq., Popham, Haik, Schnobrich & Kaufman, for Detyens Shipyards, Inc.; and William E. Franczek, Esq., Michael L. Sterling, Esq., and Howard W. Roth, III, Esq., Vandeventer, Black, Meredith & Martin, for Norfolk Shipbuilding and Drydock, Inc., interested parties.
Christopher A. Muessel, Esq., Department of Transportation, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protests challenging rejection of firm as nonresponsible under two different solicitations for ship deactivation services are timely under the General Accounting Office's Bid Protest Regulations where each protest was separately filed within 10 days of formal notices of initial adverse agency action.

2. Contracting agency's determination in connection with procurement for ship deactivation services that small business bidder failed to meet certain criteria in agency's prequalification program with respect to facilities and resources relates directly to the firm's capability to perform the contract. As such, the agency's determination concerns the firm's responsibility, requiring that the matter be referred to the Small Business Administration under certificate of competency procedures.

DECISION

Stevens Technical Services, Inc., a small business, protests its rejection as nonresponsible under invitation for bids (IFB) Nos. DTMA92-92-B-205011 (IFB No. 205011) and DTMA92-92-B-202004 (IFB No. 202004), issued on behalf of the Maritime Administration (MARAD), Department of

Transportation.[1] The solicitations sought bids for deactivation services on the S.S. Cape Cod (IFB No. 205011) and S.S. Cape Canso (IFB No. 202004), two vessels in the agency's ready reserve force. The protester contends that the agency improperly denied the firm a "Shipyard Agreement" (SA), a prerequisite for award under both solicitations. Stevens also argues that the agency should not have rejected the firm as nonresponsible without referring the matter to the Small Business Administration (SBA) for consideration under certificate of competency (COC) procedures. In supplemental protests, Stevens argues that the agency improperly proceeded to make award under IFB No. 202004, and improperly allowed performance to proceed under IFB No. 205011 without obtaining all necessary agency approvals.

We sustain Stevens's initial protests and dismiss its supplemental protests.

BACKGROUND

The IFBs, issued in September of 1992, required bidders to separately price approximately 170 contract line items and to submit a total price under each IFB, covering all labor and materials necessary to perform the required deactivation services on each vessel. Attachment No. J1 incorporated into each IFB MARAD's Master Lump Sum Repair Agreement (MLSRA) in full, which set forth certain standard clauses and conditions applicable to ship repairs under which qualified contractors are required to perform. Prior to issuing the solicitations, however, the MARAD Administrator had determined that the MLSRA system was ineffective in selecting qualified contractors, often resulting in unacceptable delays and unsatisfactory workmanship.

In view of the need for a more effective uniform qualification system, the MARAD Administrator turned to the Department of the Navy's prequalification process as a model

---

[1]IFB No. 202004 was issued by Marine Carriers (usa), Inc., and IFB No. 205011 was issued by OMI Ship Management, Inc., on behalf of MARAD. Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551 et seq. (1988), our Office's jurisdiction extends to subcontract procurements where, as here, a government prime contractor is acting "by or for the government." 4 C.F.R. § 21.3(m)(10) (1993); Tim-Co Engine Servs., Inc., B-248316, May 20, 1992, 92-1 CPD ¶ 457.

for a new program within MARAD.[2] In his written determination establishing MARAD's new system, the Administrator stated that the program would mirror the Navy's system, except that MARAD would use the C-3 breakbulk container ship as its baseline standard to determine whether a firm is qualified, rather than the Navy's more complex minesweeper standard.[3] As with the Navy's two-tiered system, the administrator generally stated that contractors capable of performing all maintenance, upgrade, sealift enhancement, and repair activities to overhaul and drydock C-3 class ships would be eligible for an SA, while contractors found capable of only performing less complex work would be eligible for a "Ship Repair Agreement" (SRA).

In accordance with the administrator's determination, MARAD amended the IFBs by replacing all references to the MLSRA with references to the new program. The amendments explained that MARAD would certify contractors for and issue SAs; listed specific requirements bidders had to meet in order to be eligible for an SA; and explicitly made award under each IFB contingent upon having an SA. The amendments stated that bidders not meeting the SA requirements may be considered for an SRA.

The agency received 13 timely bids in response to IFB No. 205011, ranging from $3,222,148 to $4,338,486; Stevens submitted the second-low bid in response to that IFB.[4]

---

[2]The Navy currently uses a two-tiered qualification system, commonly referred to as a "Master Agreement for Repair and Alteration of Vessels" (MARAV). There are two types of MARAVs, Master Ship Repair Agreements and Agreements for Boat Repairs (ABR), which differ according to the nature and complexity of the work a contractor is qualified to perform. See generally Campbell Indus., B-238871, July 3, 1990, 90-2 CPD ¶ 5; Fischer Marine Repair Corp., B-228297, Nov. 20, 1987, 87-2 CPD ¶ 497.

[3]The protester describes C-3 vessels as relatively small, breakbulk cargo vessels originally built during the early 1960's to carry commercial cargo loaded onto pallets and lifted into the vessel's cargo holds by cranes and stowed by stevedores. The main engines of C-3 vessels are simple steam turbines powered by boilers using 1940's and 1950's technology. According to the protester, the advent of larger container cargo ships rendered these vessels commercially obsolete.

[4]The G. Marine Diesel Corporation, the apparent low bidder under IFB No. 205011, protested the rejection of its bid to our Office (B-250515.3). Since G. Marine was not a holder

(continued...)

Of the four bids the agency received in response to IFB No. 202004, ranging from $2,997,670 to $5,153,734, Stevens submitted the low bid. On November 23, the agency orally notified Stevens that based on the results of a survey conducted of Stevens's facilities on October 8, in connection with the firm's SA application, the agency had found Stevens ineligible for an SA. MARAD then rejected as nonresponsible the firms that submitted the five lowest priced bids under IFB No. 205011 for failure to hold SAs, including Stevens, and also rejected Stevens as nonresponsible under IFB No. 202004. MARAD's rejection of Stevens as nonresponsible was based solely on the firm's failure to meet the SA qualification criteria.

In a letter to Stevens dated December 1, the agency stated that the principal reasons for denying the protester an SA were that: Stevens does not "possess the production capabilities or facilities to support performance of at least 55 percent of a major overhaul with its own workforce and within its own facilities"; Stevens did not "possess (defined as ownership or long-term lease)" a pier with integrated shop facilities; the firm's second tier of management is insufficient to effectively absorb a significant increase in workload; and Stevens did not have in place procedures related to production control, quality assurance, and safety. MARAD stated in its letter, however, that based on the results of the pre-award survey, coupled with the fact that Stevens holds a Navy ABR, Stevens qualified for an SRA.

On December 2, Stevens filed an agency-level protest challenging MARAD's decision to deny Stevens an SA and the rejection of its bid under IFB No. 202004. The agency denied in part and dismissed in part that protest in a letter dated December 24. On December 30, Stevens filed a protest in our Office challenging the agency's actions under IFB No. 202004. Subsequently, in a letter dated January 4, 1993, the agency informed the protester that it had rejected its bid under IFB No. 205011 for failure to hold an SA, and of the award of the contract to Detyens Shipyards, Inc., the sixth-low bidder under that IFB. On January 7, 1993, Stevens filed a separate protest

---

[4](...continued)
of an SA, and since the firm had not applied for an SA prior to bid opening as required by the solicitation, G. Marine was ineligible for award under the terms of the IFB; the firm thus lacked the direct interest required to qualify as an interested party under our Bid Protest Regulations. Accordingly, we dismissed the protest. See 4 C.F.R. § 21.0(a).

in our Office challenging the agency's actions under IFB No. 205011.[5]

DISCUSSION

Procedural Matters

The agency maintains that Stevens's protests are untimely under 4 C.F.R. § 21.2(a)(1), arguing that since "most" of Stevens's protest grounds are challenges to the SA eligibility requirements announced in the IFBs, to be timely under our Regulations, Stevens was required to have filed its protests prior to bid opening. The agency also argues that since the protester was orally advised that it was ineligible for an SA on November 23, 1992, the firm was required to have filed its protests in our Office challenging that determination within 10 working days from that date. See 4 C.F.R. § 21.2(a)(2). The agency thus concludes that since Stevens did not file its protests until well after bid opening, and more than 10 working days after the firm was orally notified that it was ineligible for an SA, its protests should be dismissed as untimely.

We disagree. Contrary to the agency's assertions, Stevens does not challenge the SA criteria as announced in the IFBs. The central issues raised in the protests, which are virtually identical under each IFB are whether MARAD improperly deviated from the SA criteria announced in the IFBs, and whether MARAD's determination that Stevens is ineligible for an SA is reasonable. Nothing in the protester's submissions could reasonably be interpreted as directly challenging the agency's decision to amend the IFBs so as to incorporate the new SA program or as objecting to the announced SA eligibility criteria. Certain general assertions peripheral to Stevens's protests arguably are expressions of frustration at the agency's decision to establish what the protester views as an unnecessarily rigorous prequalification program. Such general expressions of disapproval, which are not central to the protester's complaint, do not warrant dismissal of the protests in their entirety as untimely filed.

---

[5]Pursuant to Federal Acquisition Regulation (FAR) § 33.104(c)(2)(i), the head of the contracting activity authorized contract performance on the S.S. Cape Cod (IFB No. 205011) notwithstanding the protest in our Office. The agency has suspended performance on the contract awarded to Norfolk Shipbuilding and Drydock, Inc., under IFB No. 202004 for services on the S.S. Cape Canso, pending resolution of that protest.

Similarly without merit is the agency's position that since Stevens was orally advised that it was ineligible for an SA on November 23, 1992, the firm was required to have filed its protests in our Office within 10 days from that date. On December 2, within 10 working days after November 23, Stevens filed an agency-level protest challenging MARAD's decision to reject the firm under IFB No. 202004.[6] By letter dated December 24, received by the protester on December 29, the agency denied in part and dismissed in part Stevens's protest. Since Stevens subsequently filed its protest in our Office on December 30, 1 day after receipt of formal notice on its agency-level protest, its protest under IFB No. 202004 is timely. See 4 C.F.R. § 21.2(a)(3).

With respect to Stevens's protest under IFB No. 205011, by letter dated January 4, 1993, the agency informed the protester of the rejection of the firm under that IFB for failure to hold an SA. Prior to receiving that letter, however, Stevens had no reason to know that it had been in line for award, and therefore had no basis for protest at that time. Accordingly, any protest by Stevens under IFB No. 205011 filed prior to January 4 would have merely anticipated improper agency action and, therefore, would have been too speculative for our consideration. See General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 CPD ¶ 512. Stevens's protest under IFB No. 205011, filed in our Office on January 7, within 10 working days of receipt of MARAD's January 4 rejection letter, is timely.

The agency also argues that the protests should be dismissed for failure to state a basis and because Stevens is not an interested party under our Regulations to maintain the protest. These arguments, however, overlook the substance of Stevens's challenges--that the agency improperly concluded that the firm is ineligible to receive an SA, and that MARAD improperly failed to refer the matter to the SBA. Sustaining the protests on either of these grounds would give Stevens the opportunity to become eligible for award either as a result of a reexamination of its SA eligibility by

---

[6]In its agency-level protest, Stevens specifically challenged "MARAD's improper and arbitrary evaluation of Stevens's technical capabilities and MARAD's improper determination of Stevens's qualifications as an SA contractor." Stevens argued that it had successfully performed "numerous MARAD contracts with almost identical requirements"; that MARAD deviated from the SA eligibility requirements; and that MARAD should have referred the matter to the SBA for COC consideration. Stevens thus raised in its agency-level protest all of the issues central to its protest here.

MARAD, or by issuance of a COC by SBA. Since the protester submitted the apparent low bid under IFB No. 202004, and since there would be no intervening parties with greater interest than the protester under IFB No. 205011, Stevens is an interested party to maintain the protests.

Referral to the SBA

We conclude that MARAD's determination that Stevens does not qualify for an SA concerns the firm's capability to perform the contracts. As such, the agency's determination concerns the firm's responsibility, requiring that the matter be referred to the SBA for COC consideration.

Responsibility refers to a bidder's apparent ability and capacity to perform all contract requirements. See Antenna Prods. Corp., B-227116.2, Mar. 23, 1988, 88-1 CPD ¶ 297. Under the Small Business Act, 15 U.S.C. § 637(b)(7) (1988), SBA has the authority:

> "[T]o certify to [g]overnment procurement officers, and officers engaged in the sale and disposal of [f]ederal property, with respect to all elements of responsibility, including but not limited, to capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific [g]overnment contract. A [g]overnment procurement officer . . . may not, for any reason specified in the preceding sentence preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the [a]dministration." [Emphasis added.]

The Act thus provides that when a procuring agency determines that a small business concern will be unable to satisfactorily perform a given contract due to questions regarding the characteristics listed, the agency must refer the matter to SBA for COC consideration. See PHE/Maser, Inc., 70 Comp. Gen. 689 (1991), 91-2 CPD ¶ 210; Braswell Servs. Group, Inc., B-248336, Aug. 19, 1992, 92-2 CPD ¶ 113.

We have previously cautioned agencies against implementing prequalification programs similar to MARAD's in a manner that circumvents the statutory requirement for referral of nonqualifying small business firms to the SBA. In Department of Agriculture's Use of Master Agreements, B-182337, Nov. 9, 1976, 76-2 CPD ¶ 390, for example, we reviewed an agency's proposed procedures for establishing a "master agreement" program for consulting services, a pre-

qualification program analogous to MARAD's system. While the procedures proposed in that case generally were appropriate, we stated that because of SBA's conclusive authority with respect to small businesses, the procedures "should provide for referral to SBA of any case involving a small business firm found not to qualify for a master agreement by reason of its lack of capacity or credit."[7] In a similar case, Office of Federal Procurement Policy's films production contracting system; John Bransby Prods., Ltd., 60 Comp. Gen. 104 (1980), 80-2 CPD ¶ 419, a determination under a government-wide, uniform prequalification system that a small business firm was not qualified to compete for film and videotape services procurements, without referral to SBA under COC procedures, violated the Small Business Act.

Similarly, the record here shows that the reasons given for rejecting Stevens--i.e., quality of facilities, staffing capability, and management/organizational structure--relate directly to Stevens's capability to perform the contracts. See FAR § 9.104-1. MARAD's denial of Stevens's SA application for failure to meet the SA eligibility criteria in those areas is therefore a determination that Stevens is not capable of performing the contracts, and as such, concerns Stevens's responsibility. MARAD itself at least implicitly recognized this by specifically concluding that Stevens was nonresponsible under both IFBs due to its failure to qualify for an SA. Since Stevens certified itself to be a small business, MARAD was required under the Small Business Act to refer its determination to the SBA for review under COC procedures. See Clegg Indus., Inc., 70 Comp. Gen. 679 (1991), 91-2 CPD ¶ 145.

MARAD relies on FAR subpart 9.2, which authorizes agencies to establish prequalification requirements, to argue that its determination that Stevens is nonresponsible is exempt from referral to the SBA. Specifically, MARAD points to FAR § 9.202(d), which states:

> "(d) The procedures in subpart 19.6 for referring matters to the [SBA under COC procedures] are not mandatory on the contracting officer when the basis for a referral would involve a challenge by the offeror either to the validity of the qualification requirement or the offeror's compliance with such requirement."

---

[7]After we issued that decision, Congress amended the Small Business Act to apply the COC process to all nonresponsibility determinations, not just those related to a firm's capacity and credit.

According to the agency, since referral to SBA here would involve a challenge to both the validity of MARAD's qualification requirements and Stevens's failure to comply with those requirements, MARAD is not required to refer the nonresponsibility determination to SBA.

In our view, the FAR provision relied upon by MARAD is not applicable to where the agency is requiring bidders to meet eligibility criteria for providing services, as opposed to demonstrating the qualifications of their products. FAR subpart 9.2 implements 41 U.S.C. § 253c (1988), as added by section 202 of the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. No. 98-577, 98 Stat. 3066 (1984). That section prescribes procedures that agencies must follow to establish certain prequalification requirements. As discussed below, it was enacted by Congress to encourage competition for qualified items, as opposed to services, and was specifically directed towards those acquisitions in which a contracting agency has established specific testing requirements or other quality assurance demonstrations related to a product which must be completed prior to award.

The statutory provision upon which FAR § 9.202(d) is based, 41 U.S.C. § 253c(c)(5), states in full:

> "(5) Nothing contained in this subsection requires the referral of an offer to the [SBA] pursuant to [15 U.S.C. § 637(b)(7)] if the basis for the referral is a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement."

Neither the language nor the legislative history of the quoted provision suggests elimination of the statutory requirement that agencies refer to the SBA determinations that a small business firm is not responsible to be awarded a services contract because the firm failed to satisfy a prequalification requirement. The Senate report accompanying the bill enacted as the 1984 Act states that the purpose of the legislation is to increase opportunities for competition, "especially for those contracts awarded for spare parts and support equipment needed to maintain major weapon systems." S. Rep. No. 523, 98th Cong., 2d Sess. 55 (1984), reprinted in 1984 U.S. Code Cong. & Admin. News 5347. The pivotal factor underlying enactment of the legislation was the concern that the government's practices with respect to procuring replacement parts for major systems needed reform, particularly as those practices affected small businesses. Id. at 5342. Based on an extensive record developed over 3 years, the Senate Committee on Small Business concluded that "small businesses have the capability to provide the government with quality products--

including spare and replacement parts--at competitive prices." Id. at 5353. The Senate report shows that the Congress was also concerned with removing obstacles faced by small businesses, particularly financial burdens, due to requirements related to testing and prequalification of products. The statute thus provides that under certain circumstances, the contracting agency shall bear the cost of testing and evaluating a product offered by a small business concern. See 41 U.S.C. § 253c(d)(1)(B); Nasco Eng'g, Inc., B-224292, Jan. 14, 1987, 87-1 CPD ¶ 57 (interpreting 10 U.S.C. § 2319(d)(1)(B), the parallel statute applicable to Department of Defense procurements).

Consistent with the purpose of the statute, FAR § 9.201 defines "qualified bidders list" (QBL) as a list of bidders who have had their products examined and tested and who have satisfied all applicable qualification requirement for that product, or have otherwise satisfied all applicable qualification requirements. Similarly, a "qualified manufacturers list" (QML) is a list of manufacturers who have had their products examined and tested; and a "qualified products list" (QPL) is defined simply as a list of products which have been examined, tested, and have satisfied all applicable qualification requirements.[8] Id. The agency does not argue that its SA qualification requirements involve any product testing or specification compliance. The solicitations, by their nature, contemplate the award of contracts for services rather than supplies. See G. Marine Diesel Corp., 68 Comp. Gen. 411 (1989), 89-1 CPD ¶ 413, and cases cited therein. Since MARAD's prequalification procedures do not establish any specific testing requirement or other quality assurance demonstration related to products, sources of products, or manufacturers, we think that the exception in FAR § 9.202(d) for referring matters to the SBA under COC procedures is inapplicable here.[9]

---

[8]In this connection, we note that the inclusion of an item on a QPL, rather than involving the ability or capacity of an offeror to perform contract requirements--i.e., whether the firm is responsible--involves the testing of a product to demonstrate compliance with specification requirements. See Goodyear Tire & Rubber Co., 72 Comp. Gen. 28 (1992), 92-2 CPD ¶ 315. A contracting officer would thus not be required to refer to SBA a product's failure to meet qualification criteria.

[9]There are references in FAR subpart 9.2 to "offerors," "manufacturers," and "sources" as well as to "products." There is a also a reference to "services" in FAR § 9.207, regarding omission or removal of a firm from an applicable listing. Some consideration of a potential offeror's

(continued...)

In sum, we conclude that MARAD's determination that Stevens is nonresponsible based solely on the agency's finding that the firm did not meet certain SA-eligibility criteria related to the firm's capability to perform the contracts should be referred to the SBA for review under COC procedures.[10] Since we sustain the protests on this basis, we need not address the protester's other complaints related to the propriety of the pre-award survey and MARAD's application of the SA qualification criteria to Stevens.

SUPPLEMENTAL PROTESTS

In its supplemental protests Stevens alleged that the agency improperly directed Detyens to proceed with performance of the work on the S.S. Cape Cod without obtaining the neces-

---

[9](...continued)
capabilities necessarily is involved in determining whether the product it offers meets the agency's qualification requirements; we think the references to offerors, manufacturers and sources in FAR subpart 9.2 are reasonably read to refer to such consideration of a potential offeror's capabilities in the context of determining whether its product meets the qualification requirements. Similarly, it is conceivable that under certain circumstances not present here a firm's "services," provided in connection with a qualified product, may warrant considering whether the firm should continue to be listed on a QPL, QML, or QBL. In view of the legislative history and the conspicuous absence of any references to "services" in 41 U.S.C. § 253c, the isolated use of that term in FAR § 9.207 simply does not warrant concluding that FAR subpart 9.2 applies to a prequalification requirement like MARAD's SA program.

[10]Unlike cases where a private management and operating contractor determines that a small business is nonresponsible, a decision over which the SBA has no jurisdiction to review, see Miklin Corp.--Recon. 69 Comp. Gen. 509 (1990), 90-1 CPD ¶ 540, the record here shows that MARAD contracting officials--not the private ship managers that issued the IFBs--evaluated Stevens's facilities and resources, determined that Stevens is nonresponsible, and made the final selection and award decision. The ship managers here were merely acting as conduits, performing only ministerial functions on behalf of MARAD. To the extent that the agency relies on our decision in Carolina Drydocks, Inc., B-218186.2, June 3, 1985, 85-1 CPD ¶ 629, to argue that referral to SBA is not required here, such reliance is misplaced. In that case the issue of whether a small business firm's failure to satisfy an agency's prequalification requirement such as MARAD's should be referred to SBA was not argued or decided.

sary determination from the head of the procuring activity responsible for that solicitation. According to Stevens, the agency's written "Findings and Determination" to proceed with performance of the contract awarded to Detyens was signed by only the contracting officer and the Director of MARAD's Atlantic region, neither of whom, Stevens argues, are authorized under CICA to make that determination. Stevens also contends that MARAD improperly awarded the contract to Norfolk Shipbuilding in the face of the protest pending in our Office in violation of CICA.

With respect to the award to Detyens under IFB No. 205011, since performance of that contract is virtually complete, even if we were to find defective the agency's determination to proceed with performance, as a practical matter, the only remedy available to Stevens would be the reasonable costs of preparing its bid in response to that IFB. See American Indus. Contractors, Inc., B-236410.2, Dec. 15, 1989, 89-2 CPD ¶ 557. Since we sustain Stevens's protest on the merits of its challenge to MARAD's decision to deny the firm an SA without referral to SBA, as explained below, we already find that Stevens is entitled to recover its bid preparation costs. Accordingly, since Stevens will receive the full remedy available to the firm, there would be no useful purpose in considering Stevens's procedural challenge to the agency's determination to continue performance of that contract.

Regarding the contract awarded to Norfolk Shipbuilding, where an agency makes a determination to a award a contract while a protest is pending, the agency's only obligation is to inform our Office of that decision, as MARAD has done here. See 31 U.S.C. § 3553(c). There is no requirement that a protester be allowed to rebut the agency's finding, nor does this Office review such a determination. See, e.g., Dock Express Contractors, Inc., B-227865.3, Jan. 13, 1988, 88-1 CPD ¶ 23. In any event, since MARAD stayed performance of the contract by Norfolk Shipbuilding pending resolution of the protest, Stevens was not prejudiced by the agency's action. Accordingly, Stevens's supplemental protests are dismissed.

RECOMMENDATION

We recommend that the agency refer the matter of Stevens's responsibility under IFB No. 202004 to SBA for a final determination under SBA's COC procedures. Since work under the contract that resulted from IFB No. 205011 for services on the S.S. Cape Cod is virtually complete, even if SBA were to issue a COC to Stevens, corrective action is unavailable

under that IFB.[11] Accordingly, we find that Stevens is entitled to recover the reasonable costs of preparing its bid under IFB No. 205011. See Bush Painting, Inc.--Modification of Remedy, B-239904.2, Jan. 11, 1991, 91-1 CPD ¶ 28.

If SBA issues Stevens a COC, the agency should terminate for convenience the contract awarded to Norfolk Shipbuilding, and award the contract to Stevens. We also find that Stevens is entitled to recover the costs of filing and pursuing its protests challenging MARAD's rejection of the firm as nonresponsible, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d). Stevens should file its claim, detailing and certifying the time expended and costs incurred, directly with the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The initial protests are sustained; the supplemental protests are dismissed.

MILTON SOCOLAR

Acting Comptroller General
of the United States

---

[11]Where an agency determines that it is in the best interest of the government to proceed with contract performance in the face of a protest in our Office, and we sustain the protest, we are required by CICA, 31 U.S.C. § 3554(b)(2), to make our recommendation for corrective action without regard to any cost or disruption from terminating, recompeting or reawarding the contract under that IFB. The IFBs called for the deactivation services to be completed within 90 days, however, and soon after MARAD submitted its agency report, the agency informed us that the contract awarded to Detyens was already 60 percent complete. Under these circumstances, since most--if not all--of the work under that contract will be complete by the time we issue this decision, corrective action is unavailable.