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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Reedsport Machine & Fabrication

File: B-293110.2; B-293556

Date: April 13, 2004

Daniel L. Duyck, Esq., Schwabe, Williamson & Wyatt, for the protester.
B. J. Braun, Esq., Department of Homeland Security, for the agency.
Peter Verchinski, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Allegation that agency's combination of two groups of motor lifeboats into one solicitation unduly restricts competition is denied where agency has reasonably demonstrated that a single contract is necessary to satisfy its minimum needs.

DECISION

Reedsport Machine & Fabrication protests the award of a contract to Modutech Marine, Inc. under invitation for bids (IFB) No. DTCG85-04-B-66B003 (IFB 003), a small business set-aside issued by the Department of Homeland Security, United States Coast Guard, for haul out and repair work on 47-foot motor lifeboats (MLB) based at a group of Coast Guard stations near Astoria, Washington. Reedsport also protests the terms of IFB No. DTCG85-04-B-695133 (IFB 133), which requested bids for the same work at Coast Guard stations near Seattle, Washington.

We deny the protests.

On August 21, 2003, the Coast Guard issued IFB 003, which provided for the award of an indefinite-delivery/indefinite-quantity (IDIQ) contract for a base year, with 4 option years. The IFB contemplated multiple awards and, towards that end, separated the MLBs into five geographic lots. Lots 1 through 4 were each composed of one Coast Guard group, while Lot 5 was composed of two groups (Group Seattle

and Group Port Angeles).¹ Vendors were allowed to bid on any lot, provided that its place of repair was within 300 nautical miles of every MLB in the lot. The IFB provided that evaluated price would include composite labor rates and foreseeable costs to the government for transporting MLBs from home moorage to the contractor's place of performance. The foreseeable costs consisted of operating costs for transporting boats, travel and per diem costs for the Port engineer, costs for a rental car, and costs (on a mileage basis) for transporting crew members.

By amendment issued on September 10, Station Tillamook was removed from Lot 4 (Group Astoria), and instead placed in Lot 3 (Group North Bend). Bid opening was October 28. Two days after bids were opened, in response to a protest, the Coast Guard removed Lot 5 from the IFB with the intent of recompeting it by separate solicitation. The contracting officer (CO) subsequently found Reedsport to be in line for award of Lots 1 and 3, and that Modutech was in line for award of Lot 4 (a third bidder was in line for award of Lot 2, not relevant here). On December 18, the contracting officer issued IFB 133, the resolicitation for Lot 5.

Reedsport raises numerous arguments with regard to the two solicitations. We have considered its arguments and find all to be without merit. We discuss the more significant arguments below.

IFB 003

Untimely Arguments

Reedsport alleges that it was improper for the Coast Guard to move Station Tillamook from Lot 4 into Lot 3, because doing so "reduced the efficiency, fairness, and predictability of the contracting process." Protest at 5.

Under our Bid Protest Regulations, protests of alleged solicitation improprieties must be filed no later than the time set for bid opening. 4 C.F.R. § 21.2(a)(1) (2004). Reedsport's challenge to the moving of Station Tillamook into a different lot constitutes an alleged solicitation impropriety, and therefore had to be raised prior to the October 28 bid opening. Because Reedsport did not file its protest until January 7, it is untimely. 4 C.F.R. § 21.2(a)(1).

Reedsport does not argue that its protest is timely; rather, it asserts that its protest should be heard under section 21.2(c) of our Regulations, which provides that we may consider an otherwise untimely protest where there was good cause for the untimely filing--some compelling reason beyond the protester's control that

¹ A group is a Coast Guard entity that traditionally encompasses several Coast Guard stations. Individual MLBs are generally assigned to a specific Coast Guard station, and have no permanent crew.

prevented the protester from filing a timely protest—or the protest presents a significant issue—one of widespread interest to the procurement community that has not previously been considered. Industrial Acoustics Co., Inc.—Recon., B-246260.2, Jan. 28, 1992, 92-1 CPD ¶ 120 at 2. This protest falls under neither exception. Reedsport does not allege, and there is nothing in the record to indicate, that Reedsport was somehow prevented from timely protesting the amendment, and while the issues raised are of interest to the protester, they are limited to the procurements in issue and are not of widespread interest to the procurement community. See R & K Contractors, Inc., B-292287, July 23, 2003, 2003 CPD ¶ 149 at 5 n.3.

Reedsport also questions the CO's justification for removing Station Tillamook from Lot 4, on the basis that the agency report shows that the justification was based in part on the CO's miscalculation of transit times from Modutech's and Reedsport's facilities. This allegation also is untimely. Even if the protester was unaware of the underlying justification for the amendment until it received the agency report, a challenge to an amendment that could have been timely raised cannot subsequently be revived by an event—such as the protester's receipt of documents indicating the agency's reasoning for the amendment—that only serves to confirm the untimely protest grounds. All Phase Env'tl., Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ ___ at 9 n.4. In any case, prejudice is a necessary element of every viable protest, and since Reedsport was able to bid on both Lot 3 and Lot 4, it is not apparent how the firm was competitively harmed. Indeed, Reedsport won Lot 3, and the MLBs from Station Tillamook therefore will provide additional work for Reedsport under the contract. Parmatic Filter Corp., B-285288.3, B-285288.4, Mar. 30, 2001, 2001 CPD ¶ 71 at 11; see Statistica, Inc. v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

Evaluation Arguments

Reedsport maintains that the Coast Guard made numerous mistakes in evaluating the Lot 4 bids, including incorrectly calculating transit distances for the boats to the contractors' facilities. Reedsport principally asserts, in this regard, that these alleged errors resulted in a miscalculation of the foreseeable costs added to its and Modutech's bids.

The agency responds that its calculations are substantially correct, and that the protester's calculations are incorrect because they are based on distances measured from group headquarters (Astoria) rather than from each boat's station, as provided for in IFB § M.3A. The agency further argues that, in any case, even using the protester's own calculation of the price impact of the agency's miscalculations, Modutech would remain the low bidder.

We need not resolve the parties' dispute as to the correctness of the calculations, since we agree with the agency that, even accepting the protester's calculations, its evaluated price would not be low. In this regard, Reedsport maintains that using the correct distances in the foreseeable cost calculation would increase the costs for

Modutech by \$21,240 for each of the 5 contract years (1 base and 4 option years), for a total of \$106,200. Comments, Feb. 17, 2004, at 5. As the agency points out, since Modutech's evaluated bid price was \$113,047 lower than Reedsport's, Modutech's bid would remain low even if Reedsport's position is correct. We note that Reedsport does not rebut the agency's position in this regard. See Comments on Supplemental Agency Report, Mar., 1, 2004. We conclude that there is no showing of competitive prejudice, and that this argument therefore does not provide a basis for sustaining the protest.²

IFB 133

Reedsport alleges that IFB 133 unduly restricts competition by unnecessarily combining Group Port Angeles and Group Seattle in the same solicitation. Reedsport states that it is unable to bid on the solicitation because Station Bellingham (in Group Seattle) is beyond the 300 nautical mile requirement for its repair facility. Reedsport claims it is unreasonable for the Coast Guard not to remove Station Bellingham from Lot 5 in order to permit Reedsport to compete, since it removed Station Tillamook from Lot 4 to increase competition.

The Competition in Contracting Act of 1984 (CICA) generally requires that solicitations include specifications that permit full and open competition, and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. See 10 U.S.C. §§ 2305(a)(1)(A), (B) (2000). Since bundled, consolidated or total-package procurements combine separate, multiple requirements into one contract, they have the potential for restricting competition by excluding firms that can only furnish a portion of the requirement. We review such solicitations, when they are protested, to determine whether the approach is reasonably required to satisfy the agency's legitimate needs. The Sequoia Group, Inc., B-252016, May 24, 1993, 93-1 CPD ¶ 405 at 4.

The agency explains that the combined solicitation is necessary because Group Seattle contains only one MLB (located at Station Bellingham), which may not generate sufficient repair work to meet the \$10,000 minimum amount under the contemplated IDIQ contract. A separate contract for Group Seattle also would deprive the agency of the potential cost benefit from a single contractor's economies of scale that would result from repairs on more than one boat, and also would

² Reedsport also alleges that the agency failed to consider certain foreseeable costs--most notably, the cost of hotel rooms for crew members who transport MLBs to the repair facility--in its evaluation. However, the costs cited by the protester were not among the five identified in the IFB as foreseeable costs that would be considered; they therefore properly were excluded from the evaluation. To the extent the protester believed these costs should have been factored into the evaluation, it was required to protest on this basis prior to bid opening. 4 C.F.R. § 21.2(a)(1).

unnecessarily increase contract administration costs. The agency determined that, notwithstanding that Reedsport would not be able to compete, combining the Groups would not result in a limited competition, since 10 firms expressed interest in the requirement as structured.

The agency's approach is unobjectionable. We see no reason why the agency should not be permitted to consider, in configuring the lots for solicitation purposes, the amount of work that would be generated under different combinations of groups, stations and boats, and the potential effect on the prices for that work (due, for example, to economies of scale), as well as whether the work generated for the single MLB would satisfy the contract minimum.³ While these considerations resulted in Reedsport's exclusion from the competition, it is clear that the Coast Guard gave due consideration to the broader competitive impact of its approach. In this regard, based on the numerous expressions of interest, the agency concluded that it could achieve the operational benefits of its approach while possibly receiving greater competition than it did under IFB 003.⁴ In arguing that its own inability to compete renders the solicitation restrictive, Reedsport ignores other legitimate competitive considerations that would lead to a different conclusion. For example, while splitting the requirement would enable Reedsport to compete for the Station Port Angeles MLBs, this might at the same time result in little or no competition for the single MLB at Station Bellingham. Similarly, Reedsport's position fails to take into account the possibility that combining the two groups could make the requirement more attractive to some potential bidders, and ultimately result in greater competition overall. We conclude that the agency reasonably combined the two groups under Lot 5.⁵

Reedsport asserts that the Coast Guard has violated various federal procurement principles and policies, including, for example, the Federal Acquisition Regulation's

³ The protester does not question the need for a \$10,000 minimum to make the requirement of sufficient magnitude to obtain adequate competition and a reasonable price.

⁴ Reedsport questions how meaningful these expressions of interest are, given that fairly limited competition (three original expressions of interest and only one responsive bid) was received for Lot 5 under IFB 003. The agency points out, however, that substantially greater interest (10 firms) has been expressed in Lot 5 as a stand alone requirement, and notes further that 4 of the 10 firms have ongoing business relationships with the agency, leading to greater confidence that they may compete. Supplemental Report, Feb. 26, 2004, at 4.

⁵ Reedsport asserts that, in the past, the Coast Guard has not combined groups in soliciting for boat repairs. The Coast Guard responds that it has never combined groups because it has never had a group with only one MLB in it before, and that it has never issued a solicitation for a single MLB.

(FAR) general policy of encouraging the government to use contractors with a successful track record in performing government contracts, or who demonstrate a current superior ability to perform. This argument is without merit. There is no evidence that the procurements here were conducted, or that awards have been made, in contravention of any policies embodied in the FAR.

The protests are denied.

Anthony H. Gamboa
General Counsel