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United States General Accounting Office  
Washington, DC 20548

Comptroller General  
of the United States

## Decision

**Matter of:** Specialty Marine, Inc.

**File:** B-293871; B-293871.2

**Date:** June 17, 2004

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Robert E. Korroch, Esq., Williams Mullen, for the protester.

David D. Bach, Esq., Department of the Navy, Naval Sea Systems Command, for the agency.

Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that agency improperly obtained services outside scope of multiple-award indefinite-delivery/indefinite-quantity contracts is denied where services were reasonably encompassed by the contracts at issue.

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### DECISION

Specialty Marine, Inc. protests the decision of the Department of the Navy, Supervisor of Shipbuilding, Conversion and Repair, USN, Portsmouth, VA (SUPSHIP) to obtain maintenance and repair services for the USNS MOHAWK (T-ATF 170) and the USNS APACHE (T-ATF 172)<sup>1</sup> under certain multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) task order contracts. Specialty Marine principally maintains that these services are outside the scope of the ID/IQ contracts, and that by acquiring them under the contracts, the agency has engaged in improper bundling.

We deny the protest.

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<sup>1</sup> The Navy explains that the designation “ATF” is an acronym for “Fleet Ocean Tug” and the prefix “T” signifies that the ship is assigned to the Commander, Military Sealift Command (MSC). Contracting Officer (CO) Statement at 1 n.2.

In 2000, SUPSHIP issued a solicitation contemplating the award of multiple ID/IQ contracts for “ship repair and shipalt installation.”<sup>2</sup> Request for Proposals (RFP) No. N62678-00-R-0041, Statement of Work, at 53. Under the statement of work, the solicitation described the scope of the contracts as follows:

## C.1 SCOPE

C.1.1 Title: Ship Repair - The contractor shall provide, as ordered, management, production manpower and services, materials, tools, and equipment, facilities, and required support to accomplish a full range of depot level repairs, ShipAlt installations, alterations, troubleshooting, maintenance, installation, and removal of major ship components and equipment on U.S. Navy Strategic Sealift and other military ships. Services shall include main and auxiliary systems (hull, mechanical, and electrical) may include development of inspections, test procedures, and specifications on designated ship systems. Task orders will generally consist of (but not [be] limited to) a single item with an estimated value of less than \$500,000. A significant number of the tasking orders will be issued for emergent repairs.

RFP at 53.

Section B of the solicitation included contract line item numbers (CLIN) for specific services for a base year and four 1-year options. Specifically, section B included separate CLINs for numerous labor categories along with estimated labor hours, and required offerors to submit hourly rates for each labor category. Several other CLINs in section B identified work for specific ships under the heading “shipalt installation” for the base year as well as option years one and two; option years three and four did not include CLINs identifying work for specific ships. In contrast to the labor hour CLINs, these CLINs were to be priced on a lump sum basis.

Ultimately, the Navy awarded four ID/IQ contracts under the solicitation for work in the Norfolk, Virginia area.<sup>3</sup> CO Statement at 1 (citing paragraph C.1.1. of the ID/IQ

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<sup>2</sup> The term “shipalt” refers to ship alteration, which is defined as “any change in hull, machinery, equipment, or fittings which involves change in design, materials, quantity, location, or relationship of the component parts of an assembly.” Fleet Modernization Program (FMP) Management and Operations Manual, SL720-AA-MAN-010, vol. 1 § 1-3.1.

<sup>3</sup> The Navy awarded a total of seven contracts under the solicitation, but only four were for performance in the Norfolk area. See Agency’s Response to Supplemental Protest at 2 n.1; ID/IQ Contract Nos. N62678-00-D-0026 through 0029. Contracts were also awarded for performance in the areas of New Orleans, Louisiana and Baltimore, Maryland.

contract). The Navy indicates that during the 3 years following the contract awards, it has competed more than three dozen task orders for various types and classes of Navy ships. Id. at 2.

On November 26, 2003, the Navy awarded Task Order 0021 for repair and maintenance work on the USNS APACHE and on March 2, 2004, the Navy issued request for quotations (RFQ) No. A133 to each of the four awardees for repair and maintenance work on the USNS MOHAWK, the sister ship of the APACHE. The MOHAWK and the APACHE are both “Fleet Ocean Tugs,” which are 226 feet long and displace 2,260 tons.

RFQ A133 provided for the performance of 27 “Standard Work Items” on the MOHAWK, including repairs to the vessel’s automatic towing machine and the clutch assembly of the tow winch, as well as inspection and repair of the ship’s five inflatable life rafts. CO Statement at 7. With regard to the tow winch work, the RFQ indicated that “Government representatives” would be present to “coordinate the repairs and provide material” for the tow winch. RFQ A133, Item No. 503.

Specialty Marine filed the instant protest on March 22, 2004, substantially after the work on the APACHE had been completed, yet prior to issuance of a task order under RFQ A133.<sup>4</sup> The agency authorized issuance of the task order under RFQ A133 based on the urgent and compelling needs of the government. The task order was issued in the amount of \$227,088, and work under the task order was completed by April 18. In completing the work, a government representative, with the technical assistance of a contractor, provided the necessary tow winch coordination. CO Response to Supplemental Protest at 2, 10-11.

Specialty Marine principally argues that the Navy’s task order for work on the APACHE and its solicitation for the award of a task order for work on the MOHAWK were outside the scope of the multiple-award ID/IQ contracts and that, by including the requirements under the ID/IQ contracts, the Navy effectively bundled its requirements in violation of the Competition in Contracting Act of 1984 (CICA) and the Small Business Reauthorization Act of 1997, 15 U.S.C. § 631(j) (2000).<sup>5</sup>

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<sup>4</sup> After receipt of the agency report, Specialty Marine supplemented its initial protest by arguing that the APACHE task order was also outside the scope of the ID/IQ contracts. Evidently, Specialty Marine first learned of the APACHE task order when it was referenced in the agency report; the agency does not contend that the protester should have known of the task order prior to the disclosure in the agency report. Because the supplemental protest was filed within 10 days of receipt of the agency report, Specialty Marine’s challenge of the APACHE task order is timely. See 4 C.F.R. § 21.2(a)(2) (2004).

<sup>5</sup> Specialty Marine also alleges that the Navy improperly awarded a sole-source contract to the individual who provided technical assistance to the government

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As a general matter, our Office is statutorily precluded from considering protests challenging the issuance of task or delivery orders under multiple-award contracts. See 10 U.S.C. § 2304c(d) (2000); see also Anteon Corp., B-293523, B-293523.2, Mar. 29, 2004, 2004 CPD ¶ 51 at \_\_\_\_\_. There is an exception to this prohibition, however, where a protester, as in this case, alleges that a task or delivery order is beyond the scope of the contract originally awarded. 10 U.S.C. § 2304c(d); Anteon Corp., supra. When a protester alleges that an order is outside the scope of the contract, we analyze the protest in essentially the same manner as those in which the protester argues that a contract modification is outside the scope of the underlying contract. The fundamental issue is whether issuance of the task or delivery order in effect circumvents the general statutory requirement under CICA that agencies “obtain full and open competition through the use of competitive procedures” when procuring their requirements. See 10 U.S.C. § 2304(a)(1)(A) (2000).

In determining whether a task or delivery order (or modification) is outside the scope of the underlying contract, and thus falls within CICA’s competition requirement, our Office examines whether the order is materially different from the original contract. Evidence of a material difference is found by reviewing the circumstances attending the original procurement; any changes in the type of work, performance period, and costs between the contract as awarded and the order as issued; and whether the original solicitation effectively advised offerors of the potential for the type of orders issued. Overall, the inquiry is whether the order is one which potential offerors would have reasonably anticipated. Anteon Corp., supra, at \_\_\_\_\_.

Here, Specialty Marine principally argues that the work on the MOHAWK and the APACHE was not anticipated under the ID/IQ contracts. According to the protester, the underlying multiple-award ID/IQ contracts contemplated only work on ships much larger than the MOHAWK and the APACHE. In support of this conclusion the protester highlights the fact that all of the ships identified in the “shipalt installation” CLINs under section B were for the much larger class of Fast Sealift Ships, which are 946 feet in length and displace 55,350 tons. In addition, the protester argues that the

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representative that coordinated the tow winch repairs on the MOHAWK. Under the bid protest provisions of CICA, only an “interested party” may protest a federal procurement. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a). Moreover, under our Bid Protest Regulations, a protest must set forth all information establishing that the protester is an interested party for the purposes of filing the protest. 4 C.F.R. § 21.1(c)(5). Because the protester failed to provide any indication that it would be an actual or prospective offeror for the technical assistance services that it claims were improperly awarded, it is not an interested party to raise this basis of protest.

ID/IQ contracts did not contemplate the inspection and repair work for the MOHAWK's five life rafts. Specialty Marine argues that this work item required a representative of the life raft's manufacturer to complete U.S. Coast Guard testing, inspection and re-installation and that the ID/IQ contracts did not specifically identify this type of work.

As noted above, the statement of work specifically provided for work on "U.S. Navy Strategic Sealift and other military ships." RFP No. N62678-00-R-0041 § C.1.1 (emphasis added). This language encompasses a broad category of ships without any limitation regarding their size and therefore clearly placed offerors on notice that task orders potentially could be issued for military ships such as the MOHAWK and the APACHE, which are ships assigned to the Navy's Military Sealift Command.<sup>6</sup> Given the broad definition in the RFP's statement of work of the range of ships to be serviced, the fact that the "shipalt installation" CLINs in section B of the ID/IQ contracts called for specific work on certain ships did not in any way limit the solicitation to those ships or ships of a similar class. Rather, that portion of section B on which the protester relies simply sets out specific "shipalt installation" work on certain ships for which a need already had been identified. See CO Response to Supplemental Protest, at 7. This is consistent with the fact that option years three and four under the ID/IQ contracts do not specify work on any particular ships.

In response to the protester's argument that the inspection and repair work for the MOHAWK's life rafts was outside the scope of the ID/IQ contracts, the agency maintains that the rafts are integral and necessary safety equipment for the ship, and that life raft repair and maintenance work "is routinely accomplished in concert with other required ship repair and maintenance work." CO Response to Supplemental Protest at 9. In addition, the agency asserts that work on the rafts falls under the express terms of the contracts' statement of work, which requires contractors to perform the "full range of depot level repairs, ShipAlt installation, alterations,

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<sup>6</sup> The protester, in a conclusory manner, questions whether the APACHE and the MOHAWK are "military ships" since they are not combat ships. This argument is baseless. As an initial matter, the protester does not provide any support for its suggestion that the phrase "military ships" is limited to combat ships, nor would the plain reading of that phrase imply such a limitation. More importantly, the fact that the APACHE and the MOHAWK are designated United States Navy ships and are under the command of the Military Sealift Command, demonstrates that they qualify as "military ships." In addition, we note that Fleet Ocean Tugs are used by the Navy in various ways in the execution of its mission, including: towing ships, barges and targets for gunnery exercises; providing platforms for salvage and diving work; participating in naval exercises; conducting search and rescue missions; aiding in the clean up of oil spills and ocean accidents; and providing fire fighting assistance. See <http://www.msc.navy.mil/factsheet/t-atf.asp>.

troubleshooting, maintenance, installation, and removal of major ship components and equipment on U.S. Navy Strategic and Sealift and other military ships.” RFP at 53.

By their very nature, ID/IQ contracts provide agencies with the flexibility to procure requirements that they are unable to precisely identify at the time of award. As a consequence, the fact that the contracts did not specify the precise work called for on the MOHAWK’s life rafts is not dispositive as the protester suggests. Rather, given the broad range of potential services identified in the ID/IQ contracts’ scope of work, as well as the fact that the value of the entire task order (of which the life raft work was only a small portion) was \$227,088, well under the \$500,000 estimated value for task orders identified in the scope of work, we think that the inspection and repair work on the MOHAWK’s life rafts reasonably would have been anticipated by potential offerors and therefore did not fall outside the scope of the ID/IQ contracts.

Specialty Marine further contends that the Navy engaged in improper bundling when it issued RFQ A133 for work on the MOHAWK. Specifically, Specialty Marine argues that “SUPSHIP’s consolidation of its requirements by adding the MOHAWK maintenance and repair work to the existing solicitation constitutes contract bundling that is not necessary and justified,” in violation of CICA and the express terms of the Small Business Reauthorization Act, 15 U.S.C. § 631(j)(3). Protest at 6. The protester notes that CICA prohibits unjustified bundling because of its potential to unnecessarily restrict competition by excluding firms that can furnish only a portion of the bundled requirements and the Small Business Reauthorization Act provides that to the maximum extent practicable, each agency shall “avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.” 15 U.S.C. § 631(j)(3).

As an initial matter, we note that while Specialty Marine’s protest may appear to be challenging the MOHAWK task order—an issue which, as discussed above, would be beyond the jurisdiction of our Office—we view the protest as a challenge to the inclusion of the work under the ID/IQ contracts, in essence, a challenge to the scope of the underlying ID/IQ solicitation, an issue that is within our bid protest jurisdiction. See LBM, Inc., B-290682, Sept. 18, 2002, 2002 CPD ¶ 157 at 4. Nonetheless, we conclude that Specialty Marine’s challenge in this regard is untimely.

The scope of the underlying ID/IQ contract and the Navy’s alleged “bundling” approach were clearly apparent from the face of the ID/IQ solicitation when it was issued in 2000. The RFP clearly indicated that task orders would be issued for various types of repair and maintenance work at three specific locations on a broad range of ships. Under our Bid Protest Regulations, protest grounds that concern an alleged impropriety in a solicitation must be filed before the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1). Here, proposals were due in 2000, well in

advance of Specialty Marine's protest of March 22, 2004. Accordingly, the protest is untimely on this ground.<sup>7</sup>

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>7</sup> We recognize that some protests challenging the scope of the underlying ID/IQ contracts may be timely based on the issuance or proposed issuance of a task or delivery order. In LBM, Inc., *supra*, for example, we recognized that the use of ID/IQ contracts with very broad and often vague statements of work may place an unreasonable burden upon potential offerors, especially small businesses, which may be required to guess as to whether particular work, for which they are interested in competing, will be acquired under a particular ID/IQ contract, and concluded that the protester only become aware of its basis of protest through the solicitation of a particular task order under the ID/IQ contract at issue. In this case, while the solicitation for the ID/IQ contracts was rather broad in its scope, it did identify a variety of specific tasks as well as their location of performance, and therefore, unlike in LBM, the solicitation was not so broad as to deny Specialty Marine reasonable notice of its protest allegation.