



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Monterey Bay Boatworks Company

**File:** B-255321

**Date:** February 24, 1994

E.C. Biddle and David Garrett for the protester, Timothy A. Chenault, Esq., United States Coast Guard, for the agency, Jennifer D. Westfall-McGrail, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Contention that agency improperly applied a foreseeable cost bid evaluation provision to protester's otherwise low bid for drydocking and repair of a Coast Guard cutter by calculating per diem costs for the cutter's crew only for bidders whose shipyards are located more than 100 miles from the crew's home port is denied where the record does not show that the agency could reasonably have foreseen that such costs would be incurred for the cutter crew at the awardee's shipyard, which was located less than 100 miles from the cutter's home port.

### DECISION

Monterey Bay Boatworks Company protests the award of a contract to San Pedro Boatworks under invitation for bids (IFB) No. DTCG85-93-B-625, issued by the Department of Transportation, United States Coast Guard for drydocking and repair of the U.S. Coast Guard Cutter PT. CARREW. The protester contends that the Coast Guard erred in applying certain price-related factors to both its bid and San Pedro's, leading the agency to conclude incorrectly that the overall cost of San Pedro's bid would be lower than the cost of Monterey's.

We deny the protest.

The IFB provided for the evaluation of bids on the basis of price and price-related factors, identified elsewhere in the solicitation as the foreseeable costs of relocating the vessel and certain specified Coast Guard personnel to the contractor's place of performance. The solicitation provided that where the location of contract performance was

more than 100 miles from the vessel's home moorage of Oxnard, California, the foreseeable costs of travel, rental car, and per diem would be computed for the 10-member cutter crew and for 3 Coast Guard officials (the contracting officer, a naval engineer, and a Naval Engineering Support Unit representative) based in Alameda, California.

The IFB provided that per diem costs for the crew and the 3 officials would be incurred at the rates set by the Joint Travel Regulations. In this regard, the IFB advised that a total of 24 days of per diem would be added for the Alameda personnel (for 12 two-day trips to the contractor's shipyard) and 45 days of per diem would be added for each of the 10 Oxnard-based crew members, if government quarters and messing were not otherwise available.

Eight bids were received by the September 24, 1993, bid opening. Monterey submitted the low bid, \$131,111, while San Pedro's bid of \$135,794 was second low. Since Monterey's shipyard is more than 100 miles from Oxnard, travel, van rental, and per diem costs for the cutter crew were added to its bid. On the other hand, since San Pedro's shipyard is only 67 miles from Oxnard, these costs were not added to its bid. After adjusting the bids to account for the foreseeable costs of relocating the vessel and transporting the Coast Guard personnel to the bidder's place of performance, San Pedro's evaluated bid price of \$142,263 was substantially lower than Monterey's, which was \$196,668.

On September 29, the contracting officer awarded a contract to San Pedro, and on October 8, Monterey filed this protest. On October 20, the Coast Guard notified us that, pursuant to 31 U.S.C. § 3553(d)(2)(A)(i) (1988), the agency would proceed with performance despite the protest because continued performance was in the best interest of the United States.

The protester complains that the bid evaluation scheme was unreasonable and that the agency made several errors in evaluating the bids.<sup>1</sup> The most significant error,

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<sup>1</sup>With respect to the protester's claim that it was improper for the solicitation to provide for computation of the travel, car rental, and per diem costs for the Alameda-based personnel only where the bidder's shipyard is more than 100 miles from the vessel's home moorage of Oxnard, the protest is untimely since solicitation improprieties must be challenged prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1993). In any event, the record shows that Monterey was not prejudiced because, despite the terms of the IFB, the agency calculated and added to San Pedro's bid the costs of  
(continued...)

according to the protester, was in the agency's calculation of the per diem costs to be applied to the bids. Monterey contends that in evaluating San Pedro's bid, the contracting officer should have added per diem for the cutter crew--as it did to Monterey's bid--since immediately after award the Coast Guard decided to house the cutter crew in San Pedro.

Monterey also argues that the contracting officer used the wrong per diem rate for the personnel traveling from Alameda, and therefore again understated the true cost of San Pedro's bid. According to the protester, these errors caused San Pedro's evaluated bid price to be understated by \$64,776, so that San Pedro's evaluated price should have been \$207,039. The protester further alleges that the contracting officer overstated the cutter crew's per diem costs for Monterey's bid because government quarters and messing were, in fact, available at Monterey. According to Monterey, this adjustment would reduce the evaluated cost of its bid by over \$28,000, to approximately \$168,000.<sup>2</sup>

As an initial matter, the Coast Guard agrees with Monterey on two of its challenges to the agency calculations. First, the Coast Guard concedes that the per diem rate of \$111 per day to calculate the costs for the cutter crew under Monterey's bid was inappropriate since government housing is available at Monterey. Thus, the agency states that it should have added only \$48.50 per person per day for the crew in evaluating Monterey's bid (\$14.50 for government quarters plus \$34.00 for meals and incidental expenses). When recalculated using this figure, Monterey's evaluated bid price drops from \$196,668 to \$168,542. Second, the agency concedes that it understated the per diem costs added to San Pedro's bid for the Alameda-based personnel traveling to San Pedro. According to the contracting officer, she should have computed per diem for these individuals at a rate of \$140 per day (rather than the \$66 rate used in the

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<sup>1</sup>(...continued)

travel, car rental, and per diem for the Alameda-based personnel traveling to the San Pedro shipyard.

<sup>2</sup>The protester also alleges that the agency erred in failing to add to San Pedro's bid the cost of daily round trip travel from Oxnard to San Pedro for the crew and the cost of a rental van for use by the crew at the shipyard. The protester asserts that correction of these errors would increase San Pedro's evaluated bid by \$5,162. In light of our decision on the per diem costs for the cutter crew, discussed below, we need not consider these issues since even if San Pedro's evaluated costs were increased by \$5,162, Monterey still would not be in line for award.

initial evaluation). By correcting these errors, San Pedro's bid increases by \$1,776 to \$145,623.

With respect to adding per diem costs to San Pedro's bid for the cutter crew, the Coast Guard responds that it correctly omitted such costs from San Pedro's evaluated bid price since San Pedro's shipyard is less than 100 miles from Oxnard. The Coast Guard contends that its evaluation properly followed the scheme set forth in the IFB. The agency acknowledges, however, that the cutter crew was, in fact, lodged in San Pedro during performance of the contract, despite the terms of the IFB.

Although the protester contends that the Coast Guard improperly made award without factoring these costs into San Pedro's bid, we see no reason to object to the award on this basis. In our view, even though the record shows that the Coast Guard ultimately was required to incur the cost of lodging the Oxnard crew in San Pedro, the record does not show that the agency could foresee that it would need to incur these costs. The clause incorporated here is a standard Coast Guard clause on foreseeable costs. There is no evidence in the record to suggest that the agency knew prior to bid opening that it would be necessary to incur such costs for this particular cutter crew if the successful bidder was located less than 100 miles from the cutter's home port.

In light of the fact that the Coast Guard reasonably included a foreseeable cost provision in the IFB, and followed this provision in evaluating the bids--with the limited exception of the areas where the Coast Guard acknowledges its miscalculations--San Pedro was properly determined to be the low evaluated bidder. Accordingly, we deny the protest.

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 for Robert P. Murphy  
 Acting General Counsel