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AMCCC

POINT PAPER

30 October 1998

SUBJECT: Putting the Value into Best Value

PURPOSE: To explain a new GAO decision, *Electronic Design*, B-279662.2, August 31, 1998.

FACTS:

- Under 10 U.S.C. 2305(a)(2)(A) the Price or Cost of an item must always be a factor in any procurement, especially one that purports to be a Best Value.

- But when the Navy Sea Systems Command attempted to procure integrated ship control system upgrades for CG47 Ticonderoga class ships, the solicitation, which called for firm-fixed prices, evaluated Price only as to whether the Price was within the Navy Budget.

- ◆ Electronic design protested the evaluation plan to the GAO, complaining that the plan violated 10 U.S.C. 2305(a)(2)(A).

- ◆ GAO, sustaining the protest, held:

“As a general rule, the Competition in Contracting Act (CICA) requires contracting agencies to include cost or price as a significant evaluation factor that must be considered in the evaluation of proposals. . . . Cost or price has not been accorded significant consideration if the agency’s evaluation and source selection decision so minimizes the potential impact of cost or price as to make it a nominal evaluation factor. . . .

Here, the agency states that price was considered only to determine whether a proposal was eligible for award. Proposals with prices greater than the budget were not eligible, nor considered for award. Once three of the proposals were determined eligible for award based on price, the Navy states that it did not consider the relative differences in price among the proposals, and did not perform a price/technical tradeoff; rather, technical merit was the sole consideration in the selection decision. Thus, to the extent the agency did consider price in this procurement, it was solely to determine basic eligibility for award. Such a consideration of price is nominal; indeed anything less would be to ignore price completely.

We conclude that the Navy’s evaluation and source selection decision did not give significant consideration to price, and therefore was inconsistent with CICA and cannot form the basis for an award.”

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◆ Recently, Command Counsel discovered a similar AMC procurement that used Price merely to establish whether the offer was to be included in the competitive range. Factors other than Price were then used in the actual award decision.

◆ We have advised HQ, AMC procurement and AMC legal offices of the case and the bottom line. Training is being adjusted to incorporate the lessons from *Electronic Design*.

● All award decisions must include Price or Cost as a significant element of the award decision under *Electronic Design*.

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