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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

# Decision

**Matter of:** BAE Systems San Diego Ship Repair

**File:** B-400350

**Date:** September 22, 2008

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Peter B. Jones, Esq., Jones & Donovan, for the protester.  
Timothy A. Chenault, Esq., Department of Homeland Security, for the agency.  
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Requirement in invitation for bid for drydock and repair of a Coast Guard cutter that work be done at “Contractor’s facility” did not render nonresponsive the bid of awardee, which proposed to perform the work at a Navy-owned drydocking facility under a use agreement between the awardee and the Navy, in the absence of an IFB provision that precluded the use of government-owned drydocking facilities.

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## **DECISION**

BAE Systems San Diego Ship Repair protests the award of a contract to Puglia Engineering, Inc. under invitation for bids (IFB) No. HSCG85-08-B-625488, issued by the Department of Homeland Security, United States Coast Guard, for drydock and repair of the United States Coast Guard Cutter (USCGC) Chase. BAE contends that Puglia’s bid should have been rejected as nonresponsive.

We deny the protest.

The IFB, issued on March 18, 2008, solicited bids for drydocking and repairs to the USCGC Chase under a fixed-price contract. The IFB summarized the work as follows:

Provide all labor materials, facility, and equipment, except as specified, to perform DRY-DOCK AND REPAIRS OF USCGC CHASE (WHEC 718) during the period of 06 August 2008 through 30 September 2008. All work will be performed at the Contractor’s facility.

IFB at 2. In addition, the IFB stated that the place of acceptance shall be at the “Contractor’s facility”; that the place of performance will be at the “Contractor’s facility”; and that the location of performance was restricted to a “Contractor’s facility” within 75 miles of the cutter’s home moorage in San Diego, California. IFB at 5, 8, 20.

Two bids were received at bid opening on April 25. Puglia’s bid stated in response to the representation and certification regarding the “Location of Offeror’s Performance” that it proposed to drydock and repair the USCGC Chase at the San Diego Naval Station Graving Dock, San Diego, California, a United States Navy-owned facility,<sup>1</sup> while BAE indicated that it would perform the work at its own San Diego facility. Agency Report, Tab 9, BAE’s Bid, at 20; Tab 10, Puglia’s Bid, at 20. Puglia’s bid was \$3,873,453, whereas BAE’s bid was \$4,463,804.

On May 18, the Coast Guard awarded the contract to Puglia as the responsible bidder which submitted the lowest responsive bid. BAE filed this protest on July 11, after the agency denied its agency-level protest challenging the responsiveness of Puglia’s bid because it proposed to perform the work at a government-owned facility.<sup>2</sup>

The crux of BAE’s protest is based on its interpretation of the term “Contractor’s facility.” BAE contends that the use of the term “Contractor’s facility” in describing where the work had to be performed, as well as the location and place of performance, precluded the use of a government-owned drydocking facility. In support of this argument, BAE argues that the use of the possessive case denoted ownership, which required the drydocking facility to be contractor-owned. In this connection, BAE cites the definitions of “Federally-controlled facilities” and government property contained in Federal Acquisition Regulation (FAR) §§ 2.101<sup>3</sup> and 45.101. Section 2.101 defines federally-controlled facilities as including federally owned buildings or leased space and section 45.101 defines government property as all property owned or leased by the government. BAE argues that these definitions indicate that the Navy’s graving dock, which is a government-owned facility, cannot be considered a “Contractor’s facility,” which BAE asserts was required to be used to perform the work under the IFB, and that Puglia’s bid, based on the use of this government-owned facility, is nonresponsive.

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<sup>1</sup> Puglia would obtain the use of this facility under a use agreement separately negotiated with the Navy.

<sup>2</sup> On July 21, the Coast Guard advised that it would proceed with performance due to urgent and compelling circumstances.

<sup>3</sup> The IFB incorporated by reference FAR § 52.202-1, which incorporated the definitions contained in FAR § 2.201. IFB at 11.

The Coast Guard responds that the term “Contractor’s facility” in the various provisions of the IFB only identified the location of contract performance and does not denote or suggest facility ownership. In fact, according to the Coast Guard, the San Diego Naval Station Graving Dock was one of the facilities that the Coast Guard, during the pre-solicitation stage, contemplated would be proposed under the solicitation because it is a Coast Guard-certified facility approved for work on this class cutter, and that there are only a limited number of useable drydock facilities that meet the IFB’s geographical restrictions.

Where a dispute exists as to the meaning of the IFB’s terms, our Office resolves the matter by reading the IFB as a whole and in a manner that gives effect to all the IFB’s provisions. D & L Constr. Co., Inc., B-279132, May 11, 1998, 98-1 CPD ¶ 136 at 4. To be reasonable, an interpretation of the IFB language must be consistent with the IFB when read as a whole. Id. We will not read a provision restrictively where it is not clear from the solicitation that such a restrictive interpretation was intended by the agency. Sturm, Ruger & Co., B-250555, Feb. 2, 1993, 93-1 CPD ¶ 92 at 5.

Based on our review of the IFB as a whole, we find that BAE’s restrictive interpretation of the term “Contractor’s facility” under this IFB as requiring a contractor-owned facility and prohibiting a government-owned facility is not reasonable. We agree with the Coast Guard that the term “Contractor’s facility,” as used in the IFB, merely denotes the drydock facility where the contractor will perform the work and that the use of the term contractor in the possessive in these provisions is recognizing nothing more than the possessive relationship between the contractor and the facility it was proposing. In this regard, the IFB is devoid of any language making ownership of the drydock a prerequisite to performing the work, nor does it specifically exclude the use of government-owned facilities. In the absence of a specific requirement for contractor ownership of the drydocking facilities or a prohibition on using government-owned drydocking facilities, there is no basis to conclude that the possessive nature of the term “Contractor’s facility” requires that the drydock facilities be contractor owned or precludes the use of government-owned drydock facilities. Thus, neither the general definition of federally controlled property in FAR § 2.201 nor the definition in FAR § 45.101, which only applies when the procuring agency is providing property under the contract, are relevant here, since neither regulation defines Contractor’s facility or property, and the drydock is not being provided to the contractor by the Coast Guard under the contract. Since the IFB did not make contractor ownership of the drydock a material term, Puglia’s bid was responsive since it took no exception to the IFB.

BAE nevertheless argues that the bid was conditioned on the Navy making the drydock facility available to Puglia under the contract, and that the record reflects that Puglia did not have approval of its use agreement with the Navy until June 4,

which was after contract award.<sup>4</sup> The timing of the approval of Puglia's agreement with the Navy to use its drydock has no effect on the responsiveness of Puglia's bid, which bound Puglia to perform the work at that facility. Rather, this is a matter that could affect Puglia's ability to perform in accordance with its bid, that is, its responsibility or to the administration of the contract, which under the circumstances is not appropriate for our review. In this regard, we note that Puglia has in fact performed the contract at the Navy facility. See Aviation Specialists, Inc; Aviation Enters., Inc., B-218597; B-218597.2, Aug 15, 1985, 85-2 CPD ¶ 174 at 2.

The protest is denied.

Gary L. Kepplinger  
General Counsel

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<sup>4</sup> The record also reflects that the Navy scheduled the San Diego Graving Dock for availability to perform this work in March 2008. See Agency Report, Tab 17M, e-mail (Mar. 13, 2008).