



## **Contract Types NES**

### **Case Study: The Fixed-Price Proposal**

The Office of Naval Research (ONR) issued a Broad Agency Announcement, which contemplated a two-phase award process for the development and testing of a prototype waterjet to be used in advanced Navy ships. For Phase I, the BAA required offerors to propose pump design, model fabrication, and a large-scale demonstration plan. Phase II required large-scale at-sea demonstrations and testing. The solicitation stated that “it is anticipated that we will award one or more cost type contracts for this effort.”

Wortec and one other firm received Phase I contract awards. While the other firm received a cost-plus-fixed-fee contract as anticipated by the solicitation, ONR issued Wortec a fixed-price contract because Wortec did not have an accounting system approved by the Defense Contract Audit Agency (DCAA). During the Phase I period Wortec suggested to ONR that it might also submit a fixed-price proposal for the Phase II award. ONR responded that it awarded the first contract as a firm-fixed-price basis to allow Wortec time to implement an approved accounting system, but would not award Phase II as a FFP contract.

Phase II proposals consisted of a technical volume and a cost volume. Both Wortec and the other Phase I awardee submitted Phase II proposals to the ONR program officer, who conducted the technical review. After this review the program officer selected both proposals for Phase II contracts in accordance with the technical evaluation criteria. The program officer then forwarded the proposals to the contracting officer for a cost analysis. The contracting officer found that Wortec’s cost proposal did not provide the needed level of cost detail but instead proposed that the award be made on a fixed-price basis, and determined that Wortec was ineligible for a cost-type award since DCAA still had not approved Wortec’s accounting system.

As a result, ONR made a Phase II award to the other Phase I contract holder, but not to Wortec. Wortec challenged the rejection of its proposal in a protest at the Government Accountability Office, arguing that the solicitation did not require submission of a cost-type proposal but merely stated that the agency anticipated making a cost-type contract award, and that the agency properly could have and should have considered Wortec’s fixed-price proposal.

Questions to discuss

- 1 – Could agency have properly considered Wortec’s fixed-price proposal?
- 2 – Did the agency properly reject Wortec’s proposal because not it was not a cost-type proposal?