



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gulf Copper Ship Repair, Inc.

File: B-272830

Date: September 25, 1996

William A. Scott, Esq., Martin Law Firm, for the protester.

Keith L. Baker, Esq., Jeffrey E. Weinstein, Esq., and Timi E. Nickerson, Esq., Eckert Seamans Cherin & Mellott, for South Texas Ship Repair, Inc., an intervenor.

Rhonda L. Russ, Esq., Department of the Navy, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award of a contract for less than the actual quantity of work initially solicited was proper where the solicitation specifically informed offerors that the agency may award a contract for any item or group items listed in the solicitation unless an offeror qualified the acceptance terms of its offer, which was not the case here.

DECISION

Gulf Copper Ship Repair, Inc. protests the award of a contract to South Texas Ship Repair, Inc., under request for proposals (RFP) No. N68958-96-R-0027, issued by the Resident Supervisor of Shipbuilding, Conversion and Repair, Department of the Navy for the post shakedown availability (PSA) of the USS ORIOLE (MHC 55).¹ Gulf Copper contends that award to South Texas based on initial proposals was improper because the Navy should have requested revised proposals after it deleted one of three production sub-line items from the solicitation following receipt of initial offers but prior to award.

We deny the protest.

¹Typically, a PSA is performed after the delivery of a newly built, activated or converted ship. The work includes correction of defects noted during the ship's guaranty period, correction of deficiencies remaining from the acceptance trials, and performance of class modifications that were not undertaken during the ship's construction.

The RFP, issued on June 17, 1996, and amended six times, contemplated award of a fixed-price PSA contract to the lowest-priced, technically acceptable, responsible offeror. No evaluation factors other than price were identified in the RFP for the evaluation of proposals. Offerors were required to propose unit prices for three contract line items (CLIN) covering the work to be performed under the contract. Of significance to this protest is CLIN 0001, which was divided into three sub-CLINs to reflect different funding sources and funding limits; in addition, each sub-CLIN corresponded to different work items and types of effort.² Each sub-CLIN was to be separately priced, and the sum of the prices for the sub-CLINs would constitute the offeror's total price for CLIN 0001.

The RFP included provisions of Federal Acquisition Regulation (FAR) § 52.215-16, Alternate II, informing offerors that the agency intended to evaluate proposals and award a contract without discussions; each offeror therefore was cautioned to ensure that its initial offer contained the offeror's best terms from a cost or price and technical standpoint. The RFP clause also advised that "[t]he Government may accept any item or group of items of an offer, unless the offeror qualifies the offer . . . [t]he Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer."

Three proposals were received by the July 15 closing date, of which only the awardee's and the protester's are relevant and therefore discussed here. As set forth below, South Texas submitted the low overall price for CLIN 0001.

OFFEROR	0001AA	0001AB	0001AC	TOTAL
South Texas	\$764,508	\$309,003	\$99,473	\$1,172,984
Gulf Copper	\$778,404	\$304,468	\$107,939	\$1,190,811

After reviewing the initial proposals, the contracting officer determined that the proposed prices for sub-CLIN 0001AC exceeded the budgeted funding by more than 100 percent. Since additional funding for this sub-CLIN was not available, the funding authority directed the contracting officer to delete sub-CLIN 0001AC from the PSA package. The contracting officer issued amendment 0006 on July 16 to delete sub-CLIN 0001AC from the solicitation, and correspondingly deleted the unit

²For example, the statement of work for sub-CLIN 0001AA listed 45 work items for work deferred from the ship's initial construction period. Sub-CLIN 0001AB contained 37 work items to correct various ship deficiencies that were identified during the ship's acceptance trials; sub-CLIN 0001AC consisted of only 1 work item, the installation of a plastic waste storage compartment on board the ship.

price for that sub-CLIN from each offeror's total price. In doing so, the competitive standing of the offerors remained the same. Consistent with FAR § 52.215-16, Alternate II, discussions were not conducted nor were revised proposals requested from any offeror. The contract was awarded to South Texas, the lowest-priced, responsible offeror, on July 17. Upon learning of the award to South Texas and the awardee's prices, Gulf Copper filed this protest with our Office. Performance of the contract has been suspended pending resolution of this protest.

Gulf Copper challenges the agency's determination to make award on the basis of initial proposals, arguing that deletion of sub-CLIN 0001AC was a significant and material change to the solicitation requirements, which affected the offerors' proposed prices, and that discussions were in the government's best interest and should have been held. The protester contends that given the opportunity to submit a best and final offer (BAFO) it would have offered a reduced price for the remaining work.

We conclude that the award was proper. The RFP expressly advised offerors that the government could make an award for "a quantity less than the quantity offered" provided the offeror did not qualify its proposal in that regard, and further warned that offerors should submit their best terms from a cost or price standpoint. Thus, firms were on notice to submit their best prices. This clause permitted the agency to make an award without regard to the materiality of the items deleted. See E. W. Bliss Co., 73 Comp. Gen. 134 (1994), 94-1 CPD ¶ 280, in which we upheld a partial award of a small portion of the line items, 6 of 54 line items, under identical award language. Here, in accordance with this RFP provision, the Navy properly awarded those CLINs for which funding was available to South Texas as the low offeror for the CLINs since the awardee had not qualified acceptance of its offer. Given that the RFP placed Gulf Copper on notice that a partial award could be made on the basis of initial proposals and that it should submit its best prices initially, Gulf Copper cannot now in effect complain that it was prejudiced by its own failure to heed these warnings. See Essex Electro Eng'rs, Inc., B-238207; B-238207.2, May 1, 1990, 90-1 CPD ¶ 438.

The protest is denied.

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