



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Marlen C. Robb & Son, Boatyard & Marina, Inc.

File: B-279393

Date: June 9, 1998

Marlen C. Robb, Jr. for the protester.

Col. Nicholas P. Retson, Capt. James A. Lewis, and Susan A. Bivins, Esq.,
Department of the Army, for the agency.

Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Sixty-calendar-day performance period is not arbitrarily short, and is unobjectionable, where agency needs vessel returned to service as soon as possible, there is significant expense to agency in keeping the vessel at the contractor's yard, and vessel is considered to be of relatively low complexity for repair and modification purposes.
2. Solicitation estimate of 10,000 pounds of steel for plate renewal is not excessive or otherwise unreasonable--notwithstanding that it may result in offerors having to propose lower unit prices, and increased contractor risk in the event that less plating work is required--where record shows that agency's estimate properly was based on the amount of steel actually ordered for plate renewal under recent prior contracts for modification and repair of similar vessels.
3. Evaluation scheme which accords greater weight to definite item prices than to indefinite item prices is unobjectionable; it represents a reasonable means of preventing deliberate unbalancing of prices between definite and indefinite items, a problem previously encountered by agency under similar prior contracts.

DECISION

Marlen C. Robb & Son, Boatyard & Marina, Inc. (Robb) protests certain provisions of Department of the Army request for proposals (RFP) No. DABT57-98-R-0008, for the repair and modification of U.S. Army Reserve Vessel LCM-8289, stationed at Fort Belvoir, Virginia.

We deny the protest.

The RFP contemplates the award of a fixed-price contract for all labor, materials, equipment and appropriate plant site to accomplish the programmed drydocking,

cleaning, painting, and repairs. The RFP states that award will be made to the responsible offeror whose offer conforms to the solicitation and is the best value to the government, based on two evaluation factors--past performance (more important) and price. RFP section M.2. The RFP's pricing schedule contains both definite and indefinite contract line items (CLIN) that require submission of unit and extended prices. All services are required to be completed no later than 60 calendar days after commencement of the performance period. RFP section F.5(c). With regard to the performance period, the RFP further provides as follows:

The performance period includes time to perform both the Definite and Indefinite Items. It is estimated that 65% of the performance period is required to perform the Indefinite Items. No additional time will be granted for new items or items performed in lieu of Definite or Indefinite Items unless the time required to perform the additional work exceeds the time required to perform the Indefinite Items.

RFP section F.5(c). With regard to price, the RFP provides as follows:

The Government will evaluate definite and indefinite items by adding a weighted amount to the offeror's total for indefinite items. A significantly higher weighted amount will be added to the offeror's total price for definite items. Since the prices submitted for known definite items are considered significantly more important than prices submitted for [in]definite items, it is imperative that the offeror submit a reasonable price for the definite items in order to be competitive.

RFP section L.9, II.B.

SIXTY-CALENDAR-DAY PERFORMANCE PERIOD

Robb argues that the RFP's 60-calendar-day duration for completing all the required work is improper because it was set arbitrarily, without consideration of the amount of tasks to be performed on the vessel.

Procuring agencies are responsible for defining and determining how best to meet their needs. See CardioMetrix, B-270701, Mar. 13, 1996, 96-1 CPD ¶ 149 at 3. We will review such determinations only to ensure that they are reasonable. G.H. Harlow Co., Inc., B-254839, Jan. 21, 1994, 94-1 CPD ¶ 29 at 3.

The 60-day performance period is reasonable. The Army reports that the LCM-8289 is a small, low complexity vessel, and that most contractors questioned in a 1996 market survey stated they had no difficulty completing work on this type of vessel within a 60-day time frame; in fact, the Army reports, 2 of 12 recently completed contracts for vessel repair work were completed ahead of the 60-day schedule. The Army further explains that there is significant expense to the agency in keeping the

vessel at the contractor's yard, since the ship surveyor must be present with the vessel while it is being repaired, thus requiring the agency to incur hotel, travel and salary costs for a contracting officer's representative unavailable to perform his normal duties. Finally, the Army states that the vessel must be returned as quickly as possible to Fort Belvoir, since reserve training on the vessel is tightly scheduled and the military's readiness posture is impaired when the vessel is out of service. The agency's need for 60-day performance clearly is supported by the above considerations, and the protester has not brought those considerations into question. There thus is no basis to object to the 60-day performance period.

Robb asserts that the RFP should clearly define the time frame for all required tasks, rather than merely establish a total 60-day performance period. The Army explains, however, that this approach is not feasible for two reasons. First, the indefinite items which will be required will not even be identified until the post-award inspection is conducted. For example, the agency states that the amount of steel requiring replacement generally cannot be determined until the vessel is in dry dock, or paint and interferences have been removed. Affidavit of Van B. Locklear at 1. Second, the agency's approach in providing only broad performance time parameters is intended to take into account offerors' unique scheduling considerations based on their differing workforce, subcontract and other circumstances. Contracting Officer's Responsive Statement, April 12, 1998, at 2. The agency's position is reasonable on its face, and Robb has not shown otherwise.

DEFINITE AND INDEFINITE ITEMS

Robb objects to the RFP section F.5(c) provision setting aside 65 percent of the performance period for the indefinite items, since this will leave the contractor with only 35 percent of the performance period, or 21 days, to complete the definite quantity items. According to Robb, after excluding 4 days for the pickup and return of the vessel, 5 days for bad weather, and 8 days for Saturdays, Sundays and holidays, the contractor will have only 4 days to complete the definite quantity items, which will require "incredible" acceleration by the contractor. Robb also maintains that the Army's activation of the indefinite items will cause disruption and delays in the contractor's performance of the definite items.

This argument is without merit. The protester's position assumes that definite and indefinite work will be performed only during the portion of the performance period identified for each. In fact, however, as the Army explains, the 65-percent figure indicated for the indefinite items is stated as an estimate only. There is nothing in the RFP which precludes the contractor from performing the two types of work simultaneously; indeed, the Army contemplates that the contract will be performed in this manner. As for the potential disruption, the agency further reports that, since the indefinite work will largely be identified and activated early in the performance period, the contractor will be aware of this work at the time it develops its progress schedule, affording it flexibility as to when during the

performance period to schedule each task. It thus does not appear that the Army's activation of these items will unduly disrupt the contractor's performance or that the 65-percent figure for performance of the indefinite items is otherwise objectionable.¹

PLATE RENEWAL

Robb objects to indefinite CLIN No. 0008, plate renewal and structural repairs, which requires prices for replating in the amount of an estimated 10,000 pounds of steel--5,000 pounds each for above and below the water line renewal. Robb maintains that this amount far exceeds the amount of replating ever previously ordered for this type of vessel, and that the extreme overstatement of the required quantity will force it to decrease its unit price, ultimately "unfairly enriching" the government when less plate renewal work is ordered under the contract. Protest Letter dated March 3, 1998, at 2.

Where an agency solicits offers on the basis of estimated amounts, the estimates must be compiled from the best information available and present a reasonably accurate representation of the agency's anticipated needs; however, there is no requirement that they be absolutely correct. Custom Env'tl. Serv., Inc., B-241052, Jan. 15, 1991, 91-1 CPD ¶ 38 at 3.

The estimate is unobjectionable. Although Robb asserts it was advised by an Army ship surveyor that no more than 1,000 pounds of steel have ever been required, the Army explains that the estimate was based on the amount of steel actually ordered for plate renewal under recent similar contracts. Specifically, the Army reports that (1) in 1991, the vessel LCM-8524 required replacement of 11,440 pounds of plate for

¹Robb disputes the Army's position that disruption will be minimized by the early activation of the indefinite items, citing one of its prior Army contracts under which an indefinite item was not activated until after the performance period ended. However, the agency responds that (1) the modification that included activation of the cited item actually was executed 1 day prior the end of the performance period; (2) the item in question was plate renewal, which could not be activated until after completion of the vessel inspection, during which holes and pitting in the steel were first discovered; and (3) this work could not have been ordered sooner, since Robb was far behind schedule on the contract. In any case, the fact that the agency previously may have activated isolated tasks late in the performance period in no way invalidates its position that indefinite work generally is, and under the contract here will be, activated early in the performance period.

the bow ramp;² (2) in 1989, LCM-8599 required replacement of 1,684 pounds of plate and in 1992 required replacement of an additional 4,285 pounds of underwater plate; (3) in 1995, LCM-8587 required replacement of 4,308 pounds of plating above, and 6,250 pounds below the waterline. Further, while the Army concedes that some vessels require only a minimal amount of plate renewal, it notes that the LCM-8289, the subject of the current RFP, is an unmodernized reserve vessel, increasing the likelihood that substantial plate renewal will be required. We conclude that the Army's judgment was based on consideration of its experience under prior similar contracts and the characteristics of the vessel under the RFP--the best information available--and that the estimate therefore is reasonable.

We note that it is apparent from Robb's submissions that its argument is based on its view that it must price the steel replacement portion of the contract below its cost in order to succeed in the competition, and its concern that, if it does so in the face of such a large steel estimate (resulting in a low unit price), it may incur an unacceptable loss if less steel replacement ultimately is required. However, an offeror's interest in developing a successful pricing strategy is not a foundation for a meritorious protest; the fact that uncertainty as to the amount of work that actually will be required may make it more difficult to formulate a desirable pricing scheme does not render the solicitation defective. Rather, simply put, if Robb cannot accept the risk of pricing the steel replacement work low, then it has the choice of pricing the work higher. The Army certainly was not required to err in favor of understating the steel replacement work merely to reduce the risk inherent in Robb's pricing strategy.

PRICE EVALUATION

Robb objects to the addition of a "significantly higher" weighted amount to the definite item prices for evaluation purposes, as provided for under RFP section L.9.II.B. It is Robb's view that, since 65 percent of the contract is designated for performance of the indefinite items, the definite item prices should not be considered significantly more important, and thus weighted significantly higher, than the indefinite item prices.

Robb's argument misses the point. The agency reports that it adopted this evaluation scheme to discourage offerors from submitting unbalanced pricing with

²Robb asserts that the 11,420 pounds of steel required for the LCM-8524 is misleading because the steel was used to repair the bow ramp, and bow ramp repairs are normally covered under a separate CLIN. The Army responds, however, that, while the prior solicitation did contain an indefinite bow ramp repair CLIN, it was under a separate CLIN for plate renewal and structural repairs that the agency actually activated the 11,440 pounds of steel plating work. Contracting Officer's Responsive Statement, April 21, 1998, at 1. Robb has not refuted this explanation.

understated prices for indefinite items and overstated prices for definite items. The relative importance of the definite and indefinite items thus refers, not to the potential quantity of work under each type of item, but to the importance of the item for purposes of the price evaluation. The definite items are considered significantly more important because those items definitely will be performed and paid for, while the indefinite items may not be performed. We find nothing improper or objectionable in this evaluation approach. Robb complains that "if we bid \$10 for a definite item and \$7 for a comparable indefinite item, and the government activates the indefinite item, we lose \$3." However, Robb's scenario ignores the fact that the weighting is only for purposes of the evaluation; Robb and the other offerors are free to price each item as they wish, and the contractor ultimately will be paid in accordance with its offered prices. To the extent Robb means to argue that the weighting is objectionable because it makes it more difficult for offerors to develop a successful pricing strategy, again, this simply is not a valid basis for challenging an otherwise unobjectionable provision.

The protest is denied.

The Comptroller General
of the United States