

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-212641

DATE: February 28, 1984

MATTER OF: Gulf Coast Defense Contractors, Inc.

DIGEST:

1. When an agency solicits bids for a requirements contract on the basis of estimated quantities, the agency's estimated quantities must be reasonably accurate representations of anticipated actual needs based on the best information available. However, there is no requirement that the estimates be absolutely correct. GAO finds that the agency's estimates in the protested procurement are sufficiently accurate projections of the agency's needs using the best information available.
2. The determination of the needs of the government and the methods of accommodating such needs are primarily the responsibility of the contracting agency. GAO will not question an agency's assessment of its needs unless the protester shows that the determination is clearly unreasonable. GAO finds that the protester has failed to establish as unreasonable the agency's requirement that work performed under work orders be performed at a rate of \$3,000 per day.
3. Where several items under a bid schedule which require separate bid prices are undisputedly for construction work, the agency properly included Davis-Bacon Act wage provisions in the solicitation along with provisions for items covered by the Service Contract Act. GAO also finds that for purposes of recordkeeping the solicitation clearly delineates between those items covered by the Davis-Bacon Act and those items covered by the Service Contract Act.

4. GAO finds the protester's contention that items meeting the solicitation specifications should also meet the standards of Underwriters Laboratories, Inc., is insufficient to show that the solicitation requirement for Underwriters Laboratory approval is unnecessary. In general, Underwriters Laboratories standards are included in a solicitation to insure that items are designed and constructed to comply with minimum safety standards, to insure better quality control, and to comply with state laws on some construction materials such as electrical equipment.
5. The fact that an unreasonably low or below-cost bid suggests the possibility of a "buy-in" does not provide any basis on which to submit a protest. In addition, an allegation that an unrealistically low bid of a bidder is due to the bidder's failure to understand what may be required under the contract involves the agency's affirmative determination of the bidder's responsibility which GAO will not review.

Gulf Coast Defense Contractors, Inc. (Gulf Coast), protests the government estimates needed for several contract line items and other alleged solicitation improprieties in invitation for bids (IFB) DABT01-83-B-0106-2, issued by the Department of the Army, Procurement Division, Fort Rucker, Alabama. The IFB is for a requirements-type contract for materials and services in connection with building maintenance and repair of family housing areas at Fort Rucker in Fiscal Year 1984. No award has been made.

For the reasons set forth below, we find Gulf Coast's protest to be without merit.

Background

The IFB was issued on July 12, 1983, with a bid opening scheduled for August 12, 1983. By letter dated August 2, 1983, and received by our Office on August 5, 1983, Gulf Coast protested against alleged unrealistic estimates in the IFB's bid schedule and alleged ambiguities elsewhere in the solicitation. As a result of that protest, the Army issued amendment 0001 to the IFB, extending the bid opening date

indefinitely to consider Gulf Coast's protest. On September 7, 1983, the Army issued amendment 0002 to the IFB which substantially revised the estimated quantities in the bid schedule and revised several other provisions. The amendment also established September 26, 1983, as the bid opening date.

By letter dated September 13, 1983, and received by us on September 21, 1983, Gulf Coast protested the fact that amendment 0002 had left unchanged the estimated quantities for many of the bid schedule line items which the company had claimed were unrealistic in its August 2 protest.

On September 26, 1983, the following bids were opened.

<u>Bidder</u>	<u>Total Bid Price</u>
Howell & Howell, Inc.	\$398,382.00
Kirschdorfer	404,246.00
Briarwood	479,174.00
Gulf Coast	506,864.49

By letter dated October 6, 1983, Gulf Coast protested the "wide range" of bid prices submitted under the IFB and requested that this Office investigate the reasons for such a range of bid prices. Gulf Coast asserted that the other bidders may have been misled by the alleged erroneous estimated quantities in the IFB's bid schedule, unaware of the "hidden cost" involved in actually performing the contract.

No bidder other than the protester questioned this solicitation, and one of the other bidders was the incumbent in the year prior to the protester.

Estimated Quantities

Gulf Coast asserts that based on its experience as an incumbent contractor, almost 50 percent of the 517 line items have estimated quantities that are much higher than necessary to perform the contract. According to Gulf Coast, there are 238 line items for which no order has been placed by the Army under Gulf Coast's current contract; many of these IFB line items have very large estimated quantity figures. As to the remaining 289 line items on which the Army has placed orders under the company's current contract, Gulf Coast alleges that many of these have extremely understated estimated quantities. Gulf Coast cites examples from the IFB line items where Army orders on its current

contract are roughly two to three times the estimated quantity for each item. The protester also cites examples of the Army's failure to state the actual quantities used during contract performance under the last three repair and maintenance contracts in determining the estimated quantities for the IFB's contract line items.

Gulf Coast also objects to the line item requirements in section 6 of the IFB, Rough Carpentry and Framing, for 1/2-inch plywood decking. Gulf Coast charges that there is no 1/2-inch plywood decking used in the Fort Rucker housing areas because the company has only encountered 3/4-inch plywood decking at Fort Rucker.

Gulf Coast argues that the wide discrepancy between the line item estimated quantities set forth in the IFB and the actual quantities ordered by the Army under Gulf Coast's current contract affects the company's confidence that the estimated quantities will accurately reflect the actual quantities the government intends to use. Gulf Coast argues that having an accurate estimate for the contract line items is very important because the contractor is required by the IFB to keep an appropriate level of stock on hand to perform the contract. Gulf Coast further emphasizes that under the terms of the IFB, liquidated damages are assessed if the contractor fails to perform the needed repair and maintenance work within a certain period of time. Finally, Gulf Coast contends that if the IFB's estimated quantities for the contract items do not accurately reflect what will be actually used by the contractor during performance, there is no way for a bidder to get its suppliers to stock many of the less commonly used items.

The Army states that as a result of the allegations made in Gulf Coast's August 2 protest, numerous changes were made in the IFB's bid schedule. The Army further states that while it may not have made all the changes that Gulf Coast felt were necessary, the revised bid schedule reflected in amendment 0002 represents the government's best estimates for the contract period. Consequently, the Army takes the position that in continuing to challenge the estimated quantities in the IFB's revised bid schedule, Gulf Coast is attempting to substitute its judgment for the Army's to define the needs at Fort Rucker.

With regard to Gulf Coast's allegation that there is no 1/2-inch plywood decking in the Fort Rucker housing areas, the Army states that there are carport roofs in the housing areas which have such decking. The Army further states that

Gulf Coast has, in fact, replaced some of these carport roofs. According to the Army, the estimated quantities for 1/2-inch plywood decking have been increased from the quantities set forth in previous solicitations because a sizeable number of carport roofs now have to be replaced.

GAO Analysis

When an agency solicits bids for a requirements contract on the basis of estimated quantities, the agency must base its estimates on the best information available. However, there is no requirement that the estimates be absolutely correct. Rather, the estimated quantities simply must be reasonably accurate representations of anticipated actual needs. Space Services International Corporation, B-207888.4, et al., December 13, 1982, 82-2 CPD 525. Moreover, the mere presence of a risk factor in the government's estimates does not render the estimates inaccurate, since there is no requirement that competitive bidding be based on specifications stated so precisely that they eliminate the possibility that the successful contractor will encounter unforeseen conditions or be required to perform slightly more or less work than specified. Natural Landscape Contractors, Inc., B-209745, et al., June 28, 1983, 83-2 CPD 32.

In our view, the issue here is whether the Army's estimated quantities in the IFB are based on the best information available. In this regard, a protester challenging an agency's estimates bears the burden of proving that those estimates are not based on the best information available. JETS Services, Inc., B-190855, March 31, 1978, 78-1 CPD 259. In our view, Gulf Coast has not established that the Army's estimates for the contract line items in the IFB were other than reasonably accurate representations of the Army's anticipated needs based on the best information available to the Army.

Gulf Coast's objection to some of the contract line item estimates is that they do not correspond to quantities actually ordered by the Army under the firm's current contract. For example, Gulf Coast complains that 36 units of IFB line item 15-0069 were used during contract performance while the Army has estimated for only 25 units of the item under the IFB. Another example of Gulf Coast's insistence on absolute correctness is line item 15-0058.b where the company objects to the Army's estimate of 45 units when 51 units were used by Gulf Coast during the performance

of its contract. As stated above, there is no requirement that the government's estimates be absolutely correct. The record shows that many variables can cause a difference between the government's estimates and the actual quantities used during performance. These variables are emergency situations requiring heavy replacements of particular items, the weather, premature wearout of certain items, and inferior materials in particular items.

In addition, the record shows that in preparing the revised estimates set forth in amendment 0002, the Army was aware of various aspects concerning the overall condition of the housing units apparently unknown to Gulf Coast. For example, Gulf Coast questions leaving the revised estimate for line item 15-0016, rodding to main drain line, at 600 units when the quantity used under Gulf Coast's contract was 1,027 units. The record shows that the Army chose not to increase the estimate for line item 15-0016 because there has been a separate contract in progress replacing old sanitary lines from the street to the housing units. Another example of information pertaining to a line item estimate not apparently known to Gulf Coast is the fact that 166 new garbage disposal units were installed on a 1982 repair and maintenance contract of the housing units so that the Army determined that it was unnecessary to increase the estimated quantity for line item 15-0021, garbage disposal units. Another example is the fact that the Army has a separate contract to replace existing thermostats in the Fort Rucker housing units with energy conservation type thermostats and, thus, the Army determined that there was no need to increase the estimated quantity for line item 15-0067, thermostats. From our view of the record, then, we find that while Gulf Coast has pointed out the discrepancies between the amounts used in the performance of its contract and the IFB estimates for the corresponding line items, Gulf Coast has not demonstrated that the IFB estimates were based on other than the best information available to the Army.

Finally, we find nothing in the IFB which requires the contractor to keep a stock of items on hand. Paragraph SP-16A of amendment 0002 provides only that the contractor is "responsible" for maintaining its own stock of supplies at levels it determines necessary to meet the commitments of the contract. In our opinion, paragraph SP-16A is nothing more than a caution that the contractor runs the risk of keeping a sufficient number of items on hand in order to perform adequately the required contract work. Moreover, the provision does not specify that the contractor maintain

stock levels based on estimated quantities in the IFB. We further find that this is well within the ambit of an agency's administrative discretion to offer to competition a proposed contract imposing maximum risks upon the contractor and minimum administrative burdens on the agency. Massman Construction Co., B-204196, June 25, 1982, 82-1 CPD 624. The Army indicates that there are several supply sources for the IFB line items within a few miles of Fort Rucker so that there should be no great need for the contractor to stock that many line items.

Impossibility of Performance

Gulf Coast objects to the provisions of paragraph SP-14 of the IFB which, according to Gulf Coast, require the contractor to perform the work at the rate of \$3,000 a day. Gulf Coast alleges that much of the work described in the IFB cannot be performed at such a pace and cites wallboard work, flooring, roofing, and painting as specific examples. Gulf Coast further alleges that most of the above-described work is "multistep" and where large quantities are involved, there is "time lag" awaiting the completion of each step. Gulf Coast refers specifically to shingle roofing in section 7 of the IFB as an example of the physical impossibility of doing \$3,000 worth of work per day. Gulf Coast notes that the unit price for roofing shingles is \$1 per square foot and, to perform \$3,000 of such work, a contractor would have to do 300 square feet on 10 different houses in one 8-hour day in order to meet the \$3,000 requirement. Gulf Coast claims that it is commercially impossible to get enough manpower and material on short notice in a "remote area" like Fort Rucker.

The Army states that the \$3,000 figure cited by Gulf Coast is the maximum amount of contract work that the Army can order in a single day and any amount less than this figure can be ordered. The Army further states that the contractor is not "expected" to do work on any single contract item at a rate more than \$2,000 per day. With regard to Gulf Coast's example of roof shingling work, the Army points out that the IFB expressly provides that 1 day is allowed for each 600 square feet of roof area. The Army states that although it could issue orders requiring roofing work at 10 different housing units in 1 day which aggregated to no more than 600 square feet, this has never happened under past repair and maintenance contracts at Fort Rucker and, according to the Army, it never will.

GAO Analysis

The determination of the needs of the government and the methods of accommodating such needs are primarily the responsibility of contracting agencies. Therefore, we will not question an agency's assessment of its needs unless the protester shows that the determination is clearly unreasonable. See Tri-Country Fence Co., Inc., B-209262.2, April 12, 1983, 83-1 CPD 381; Integrated Forest Management, B-200127, March 2, 1982, 82-1 CPD 182.

Gulf Coast has failed to show the Army acted without a reasonable basis in specifying contractor performance time on the basis of doing \$3,000 worth of work per day. Contrary to Gulf Coast's assertion that insufficient manpower exists in the Fort Rucker area to do some of the contract work at such a rate, the record reveals that metropolitan Dothan, Alabama, which is near Fort Rucker, has a population over 100,000. The record further reveals that the Alabama counties in which Fort Rucker is located have been designated by the United States Department of Labor as labor surplus areas because of high unemployment. Consequently, we see no basis for Gulf Coast's argument that Fort Rucker is located in a remote area.

Furthermore, we note that the \$3,000-per-day figure represents the maximum amount that is to be performed for routine work. In this regard, the IFB permits a 3-day period for a contractor to obtain several hard-to-get construction materials once an order for such materials has been placed by the Army. Thus, under the terms of the IFB, performance time where these difficult-to-obtain materials are involved is based on 3 working days per order and includes ordering and procuring the materials, installation, startup and totally completing the order.

Labor Hours Recordkeeping

Gulf Coast complains that the IFB does not mention how the contractor's Davis-Bacon Act work, 40 U.S.C. § 276a (1976), is to be separated from the contractor's Service Contract Act work, 41 U.S.C. § 351, et seq. (1976). Gulf Coast questions how a contractor can keep separate records when he will be receiving numerous work orders in any given day during the performance period and he has no control over whether they are Service Contract Act work orders or Davis-Bacon work orders.

The Army states that amendment 0002 to the IFB clearly shows the contract line items to which the Service Contract Act applies; all other contract line items are considered to be Davis-Bacon Act items. The Army argues that this means that the contractor must establish procedures for keeping track of the hours his employees work on line items to which the respective acts apply. In the Army's view, such record-keeping is not an insurmountable task.

We agree with the Army. Gulf Coast does not deny that most of the work under the IFB is construction work and, thus, subject to the Davis-Bacon Act. See Hero, Inc., B-213225, December 14, 1983, 83-2 CPD 687. As to work covered by the Service Contract Act, we fail to understand how a contractor could not know when the work it was performing under a work order involved such work. For each line item in the IFB to which the Service Contract Act applies, the letters "SCA" appear next to it in parentheses. Therefore, we find that a contractor should easily be able to determine the wage requirements under the various categories of work set forth in the IFB.

Underwriters Laboratories, Inc., Approval

Gulf Coast points out that the IFB's special provisions provide that when the technical provisions require it, the bidder is to furnish samples, descriptive literature, certifications or shop drawings on the materials the bidder proposes to use. Gulf Coast further points out that the IFB's special provisions require proof that contract materials conform to the standards of Underwriters Laboratories, Inc. Gulf Coast questions the government's need for proof that materials are in compliance with the standards of Underwriters Laboratories, Inc. According to Gulf Coast, this is an unnecessary duplication of the requirements of the IFB's technical specifications. Gulf Coast alleges that it has never seen an item meeting government specifications that would not also meet the standards of Underwriters Laboratories, Inc.

We find that Gulf Coast has failed to establish that the IFB's requirements are unnecessary. In general, Underwriters Laboratories, Inc., standards are included in a solicitation to insure that items are designed and constructed to comply with minimum safety standards, to insure better quality control, and to comply with state laws on some construction materials such as electrical equipment. See Phoenix Power Systems, B-204038, November 2, 1981, 81-2 CPD 374. Moreover, we note that the IFB makes it relatively

simple for the contractor to show compliance with the standards of Underwriters Laboratories, Inc., by providing that the label of that organization shall constitute proof of compliance.

Bid of the Low Bidder

Gulf Coast asserts that the bid of the low bidder is so low as to indicate that the company may have been misled by the estimated quantities shown in the IFB item for the various line items. Gulf Coast argues that the low bid appears to be "more than your standard buy-in." Gulf Coast requests that our Office investigate the matter to determine the reasons for the wide range of bids submitted under the IFB.

An acceptance by the contracting agency of an unreasonably low or below-cost bid is not illegal and, therefore, the possibility of "buying in" does not provide a basis for challenging a responsive bid. Fermont Division, Dynamics Corporation of America; Onan Corporation, B-195431, June 23, 1980, 80-1 CPD 438. We have long held that the possibility of a "buy-in" is not a proper ground upon which to protest. American Marine Decking Systems, B-203748, July 8, 1981, 81-2 CPD 23. Further, with respect to Gulf Coast's request that we investigate the reasons for the wide range of bid prices submitted in response to the IFB, it is not the practice of this Office to conduct investigations pursuant to our bid protest function for the purpose of establishing the validity of a protester's speculative statements. Decision Sciences Corporation, B-205582, January 19, 1982, 82-1 CPD 45. Finally, we have also held that an allegation that an unrealistically low bid of a bidder is due to the bidder's failure to understand what may be required under the contract involves the type of agency affirmative determination of the bidder's responsibility which we will not review. Hero, Inc., supra.

Conclusion

We deny the Gulf Coast protest in part and dismiss it in part.


for Comptroller General
of the United States