

**DECISION**

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

**FILE:** B-221768 **DATE:** May 8, 1986  
**MATTER OF:** Great Lakes Dredge & Dock Company

**DIGEST:**

1. The ability to perform a contract and whether a bidder has the capacity to perform are matters of responsibility, not of responsiveness.
2. Compliance with dredging plant and equipment schedule attached to the bid form setting out the capacity required for the dredging equipment does not involve a matter of responsiveness. The sufficiency of the capacity of the equipment is a matter of responsibility and could be determined after bid opening and prior to award.
3. Our scope of review in matters involving definitive responsibility criteria is limited to ascertaining whether evidence of compliance has been submitted from which the contracting officer reasonably could conclude that the definitive responsibility criteria had been met.

Great Lakes Dredge & Dock Company (Great Lakes) protests an award to Gulf Coast Trailing Company (Gulf Coast) under invitation for bids (IFB) DACW07-86-B-0003, issued by the United States Army Corps of Engineers, San Francisco district, for maintenance dredging of the Mare Island Strait in Solano County, California.

The protest is denied.

Bids were solicited for dredging and disposing of an estimated quantity of 800,000 cubic yards of material. Gulf Coast submitted the apparent low bid in the amount of \$1,038,000 and Great Lakes submitted the second low bid in the amount of \$1,192,000.

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Great Lakes alleges that Gulf Coast's low bid was nonresponsive and, therefore, should not have been accepted by the Corps of Engineers. In this regard, Great Lakes refers to section 1.d. of the "DREDGING PLANT AND EQUIPMENT SCHEDULE" which was attached to the bid form and which states:

"Equipment Evaluation

"Prior to award of contract, equipment will be evaluated on the basis of the following:

Production of no less than 30,000 cubic yards per day of insitu material of 1380 gram/liter density hauled and dumped at a distance of 21,000 feet. Hydraulic pipeline equipment will be restricted to a discharge line length not to exceed 100 feet (length to be measured from dredge)."

Great Lakes states that in response to the above clause, Gulf Coast listed the hopper dredge Atchafalaya to perform the contract but the Atchafalaya is incapable of a 30,000-cubic-yard-per-day production capability. Great Lakes contends that Gulf Coast is presently attempting, after bid opening, to add additional equipment to that listed on the above schedule. Great Lakes argues that this post-bid-opening addition of equipment is improper since Gulf Coast is in effect changing its bid. Great Lakes states that Gulf Coast's bid was nonresponsive at bid opening because it failed to comply with the terms of the IFB and must be rejected. Should we find that this protest raises an issue of responsibility, Great Lakes contends that the Corps of Engineers' determination that Gulf Coast is a responsible bidder is improper and arbitrary. In the alternative, Great Lakes requests that the solicitation be canceled because the specifications are ambiguous and unfair.

The Corps of Engineers agrees with Great Lakes that the Atchafalaya cannot meet the required 30,000-cubic-yard production capacity, but states that this fact did not make the bid nonresponsive. Rather, the Corps states that the question raised with respect to Gulf Coast's production capability is a matter of responsibility. It cites two of our decisions for the proposition that the evaluation of the production capability of dredging equipment is a matter of responsibility. Marine Construction and Dredging, Inc., B-204580, Aug. 9, 1982, 82-2 C.P.D. ¶ 116, and M-S and Associates, B-183282, May 14, 1975, 75-1 C.P.D. ¶ 296.

Great Lakes in turn argues that if the solicitation had simply incorporated a general plant and equipment schedule, which it states was the case in Marine Construction and Dredging, Inc., B-204580, supra, it would concur with the Corps of Engineers. It contends, however, that this solicitation required bidders to designate the equipment the bidder was offering to utilize on the project which could meet the specific production provision requirement and, accordingly, the provision was a term of the invitation which must be satisfied in the bid. It distinguishes Marine Construction and Dredging, Inc., B-204580, supra, because, there, the plant and equipment schedule did not contain a specific daily production requirement such as stated in this solicitation. With regard to M-S and Associates, B-183282, supra, which held that "the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the IFB," Great Lakes argues that Gulf Coast has not offered the exact thing called for in the IFB and, accordingly, by that test, Gulf Coast is nonresponsive.

Responsiveness deals with a bidder's unequivocal promise, as shown on the face of its bid, to provide the items or services called for by the material terms of the IFB. A-1 Pure Ice Co., B-215215, Sept. 25, 1984, 84-2 C.P.D. ¶ 357. Material terms of a solicitation are those which affect the price, quantity, quality, or delivery of the goods or services offered. Mobile Drilling Company, Inc., B-216989, Feb. 14, 1985, 85-1 C.P.D. ¶ 199.

On the other hand, the ability to perform a contract and whether a bidder has the capacity to perform are matters of responsibility, not of responsiveness. AUL Instruments, Inc., B-220228, Sept. 27, 1985, 85-2 C.P.D. ¶ 351. Moreover, we have held that whether a bidder has the necessary equipment to perform a contract is a matter of responsibility. Kelly & Associates, B-215641, July 20, 1984, 84-2 C.P.D. ¶ 75.

Under this solicitation, Gulf Coast bid \$1,038,000 to perform dredging and disposal for an estimated quantity of 800,000 cubic yards. The contract had to be completed in 60 days. Contrary to Great Lakes' allegation, there is no performance requirement in the solicitation that 30,000-cubic-yards be dredged per day. Accordingly, Gulf Coast bound itself to perform the services called for in the solicitation for a fixed price and its bid was responsive.

The dredging plant and equipment schedule attached to the bid form makes clear by its own terms that the capability of the equipment listed was considered a matter

of responsibility. The schedule specified that equipment evaluation would be performed prior to contract award, an event subsequent to bid opening. We have held that an agency may allow a prospective awardee a reasonable period of time after bid opening within which to cure a problem related to its responsibility since contract award, not bid opening, is the critical time for determining the responsibility of a firm. Base-Operation-Management-Service Inc., B-218223, Feb. 26, 1985, 85-1 C.P.D. ¶ 242.

We do not agree with Great Lakes that Marine Construction and Dredging, Inc., B-204580, supra, is distinguishable because the agency there was not specific as to the capacity of the equipment desired, but merely required a listing of equipment. Great Lakes argues that the greater specificity as to the capacity of the equipment in this case changes the issue from responsibility into responsiveness. As noted above, however, the capacity to perform a contract is a matter of responsibility which may be decided after bid opening and prior to award. AUL Instruments, Inc., B-220228, and Base-Operation-Management-Service Inc., B-218223, supra. The fact that the specific capacity may be delineated in detail does not change the matter to an issue of responsiveness. Moreover, we note that in M-S and Associates, B-183282, supra, the solicitation specifically required a dredge tender with engines of 200 horsepower, a specific capacity, and the bidder listed a tender of 110 horsepower. The bidder was permitted to change the engines of the tender, after bid opening and prior to performance, to comply with the 200-horsepower requirement since compliance was a matter of responsibility.

Therefore, the bid was responsive.

Great Lakes also alleges that the Corps of Engineers' determination that Gulf Coast is responsible is arbitrary and capricious. It alleges that the capacity of additional equipment which the Corps has stated Gulf Coast may use to increase its dredging capability is insufficient to meet the 30,000-cubic-yard-per-day requirement.

Responsibility determinations are inherently judgmental and contracting officers are offered wide discretion in the area. Our Office will not review an agency's affirmative determination of responsibility absent a showing of possible fraud or bad faith, or a failure to apply definitive responsibility criteria. 4 C.F.R. § 21.3(f)(5) (1985).

Definitive responsibility criteria are specific and objective standards, established by an agency for use in measuring a bidder's ability to perform the contract. These special standards limit the class of bidders to those meeting specified qualitative and quantitative specifications necessary for adequate contract performance. Vulcan Engineering Co., B-214595, Oct. 12, 1984, 84-2 C.P.D. ¶ 403. It is clear, therefore, that the 30,000-cubic-yard-per-day capacity requirement is a definitive responsibility criterion.

Great Lakes states that Gulf Coast's equipment schedule shows the Atchafalaya's capacity at 450,000 cubic yards per month or 15,000 cubic yards per day. Great Lakes contends that Gulf Coast only has a commitment from a potential subcontractor for an additional dredge with a 9,333-cubic-yard-per-day capacity and, therefore, Gulf Coast still cannot meet the 30,000-cubic-yard-per-day criterion. Great Lakes alleges that another dredge with a 20,000-cubic-yard-per-day capacity which Gulf Coast states it also may subcontract for is unavailable for a minimum of 7 weeks.

The contracting officer, however, relied on a statement of the Chief, Construction Management Branch of the San Francisco District of the Corps of Engineers, that both of the above two dredges owned by the potential subcontractor are available to Gulf Coast.

Our scope of review in matters involving definitive responsibility criteria is limited to ascertaining whether evidence of compliance has been submitted from which the contracting officer reasonably could conclude that the definitive responsibility criteria had been met. Presto Lock, Inc., B-218766, Aug. 16, 1985, 85-2 C.P.D. ¶ 183. Here, the contracting officer relied on the report from the Chief Construction Management Branch that both of the additional dredges were available to Gulf Coast. Accordingly, we find the contracting officer's determination that Gulf Coast is responsible to be reasonable based on the evidence before him.

This basis of protest is denied.

Great Lakes' alternative protest is that the specifications are defective. Great Lakes argues that the specification defect was latent and did not surface until after bid opening. It states that it had interpreted the requirement for listing equipment on the plant and equipment schedule as meaning that the specific equipment had to be

used for the work and that it had to have no less than a 30,000-cubic-yard-per-day capacity. If it had known that the plant and equipment schedule would not have been so interpreted, Great Lakes states it could have listed smaller equipment and lowered its bid. We reject this basis of protest, which is essentially based on the fact that Great Lakes misread a provision dealing with the bidder's responsibility and interpreted it as one affecting the bidder's responsiveness. We think that the provision clearly dealt with responsibility and Great Lakes' erroneous understanding of the provision was due to its own misinterpretation of the provision and not to any latent defect in the solicitation.

The protest is denied.

*for Seymour Spurr*  
Harry R. Van Cleave  
General Counsel