



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bay Decking Co., Inc.

File: B-227833

Date: September 28, 1987

DIGEST

Protester's claim that the award was made to other than the low quoter on small purchase request for quotations because the purchase order confirming the award was for a higher price than the protester's quote is not supported by the record, which shows the initial oral order was to the lowest quoter and the confirming order reflected a changed condition discussed when the low quoter started work before the confirming purchase order was issued.

DECISION

Bay Decking Company, Inc. (BDC), protests the issuance of a purchase order by the Department of the Navy, Naval Supply Systems Command, to American Marine Decking Company (AMD) under request for quotations (RFQ) No. N62791-87-Q-0366 for the replacement of the nonskid helicopter flight deck on the combat ship USS Bagley. BDC contends that its quotation was lower than that of AMD and that the purchase order therefore should have been issued to BDC.

We deny the protest.

The RFP, issued on April 29, 1987, called for the replacement of a steel nonskid flight deck. Quotations were to be submitted by May 5, and performance was to be completed between May 7 and May 19. The three firms solicited submitted the following quotations:

American Marine Decking Co.	\$11,000
Bay Decking Co., Inc.	\$12,600
Advanced Surface Technology	\$24,300

On May 5, the agency informed the protester that a purchase order would be issued to AMC based on its low quotation of \$11,000 and on May 6 the contracting officer placed an oral purchase order with AMD.

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On June 8, BDC protested the award to AMD contending that AMD quoted a higher price (\$14,900) than BDC (\$12,600). This contention is based upon copies of the purchase order and the buyer's worksheet on which the quotations and purchase order confirmation had been recorded that were obtained from the Navy by BDC by June 4, 1987, under the Freedom of Information Act (FOIA). The written purchase order was dated May 6, 1987; showed a price of \$14,900 for the replacement of the U.S.S. Bagley's "FLIGHT DECK NON-SKID (ALUMINUM DECK)" (emphasis added); and had a delivery date of May 7-19, 1987. On the buyer's worksheet in the column where AMC's quotation was recorded, the figure \$11,000 recorded on the first line is crossed out and on the next lines appear the following:

"add requirement for alum deck	
"[UNIT PRICE]	[TOTAL]
\$14,900	\$14,900
"add requirement	
aluminum deck"	

"Conf. Order w/Jim 5/6/87"

BDC interpreted these documents as showing that on May 6, 1987, the Navy issued a purchase order under the subject solicitation to AMD for a firm-fixed-price of \$14,900, not \$11,000 as BDC had been informed on May 5.

The Navy buyer explains that she recorded the three quotations on the worksheet on May 5 and when she verbally placed the order on May 6, she noted "Conf. Order w/Jim 5/6/87" on the bottom part of the worksheet. When AMD reported to the USS Bagley on May 7 to begin work, it discovered that the ship's flight deck was made of aluminum instead of steel as indicated in the RFQ. AMD immediately advised the contracting officer of this fact and requested that its quotation of \$11,000 for work on a steel deck be increased by \$3,900 for a total price of \$14,900 because of the additional costs involved in performing the work on an aluminum deck. The agency states that it verified that incorrect specifications had inadvertently been included in the solicitation and confirmed that work on an aluminum deck does require extra effort justifying the proposed price increase.

On May 7, the contracting officer issued an oral modification to the oral May 6 purchase order to require work on an aluminum deck at a price of \$14,900. These changes were then recorded on the buyer's worksheet. The agency also explains that the modification and price adjustment are not shown in the written purchase order because that order was not prepared until May 17 (10 days after the modification

was made) and, thus, only the corrected requirement and the final price are shown.

Although the protester expresses disbelief in the agency's explanations, it has not shown the purchase order was not placed as stated by the agency.

BDC also claims that when it submitted its quotation, it was aware that the flight deck of the USS Bagley was aluminum and that its price quotation was based upon the performance of work on an aluminum deck. Thus, BDC maintains that it should have been awarded the purchase order on the basis of its second low quotation, since AMD's price on the aluminum deck was higher. The protester also argues that the Navy was aware of the defect in the specifications prior to the time it issued the purchase order on May 6.^{1/}

However, nothing in the record indicates that the Navy knew of the defect in the specifications when it issued the purchase order. Moreover, the Navy states that at no time prior to filing its protest did BDC indicate that its quotation was based on work on an aluminum deck and that none of the offerors inquired of the contracting officer concerning the kind of deck on the ship. While the protester claims it did make queries, it did not take exception to the RFQ requirement to "replace flight deck non-skid (steel deck)" in its quotation. Consequently, BDC's statement that it knew the decks of the USS Bagley were aluminum, and not steel, and quoted accordingly, is not supported by the record. Furthermore, if the protester was aware of or suspected such a material defect in the specifications prior to opening, it had a duty to confirm the matter with the agency and seek a correction of the specifications prior to opening. In this regard, an offeror may not blindly make its own assumptions regarding the meaning of a defective solicitation and then expect relief when the agency does not act in the manner the offeror assumed it would. See General Engineering & Machine Works, B-222929, Oct. 27, 1986, 86-2 C.P.D. ¶ 477.

In its comments filed after the conference on this protest, BDC presents the additional argument that it should have

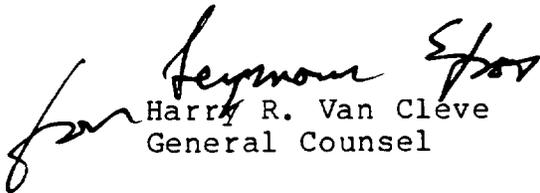
^{1/} While the protester has not raised this as an issue, we also find that the modification did not change the essential nature of the contract originally competed--i.e., resurfacing the flight deck--and, therefore, the additional work is within the scope of the contract, and can be added pursuant to the changes clause so that and a new procurement is not necessary. See King-Fisher Co., B-224341, Aug. 28, 1986, 86-2 C.P.D. ¶ 240.

received the purchase order since the inclusion of costs for crane service in its quotation rendered its price yet lower than AMD's quote, which the protester believes did not include crane service. This contention is based on the handwritten notation "3500 dry dock crane" which appears on the buyer's worksheet in the column where AMC's quotation was recorded.^{2/}

However, the record shows that this notation does not pertain to the basic purchase order, but to work on the ship's hangar deck required by a modification issued to the purchase order dated May 19. Also, the protester has not shown that AMD's quotation did not include the required crane service. Indeed, the Navy states that AMD provided its own crane service for the basic purchase order work.

The protest is denied.

Since the protest is denied, BDC's claims for proposal preparation costs and the costs of filing and pursuing the protest are denied. See Forecasting International Ltd., B-220622.3, Apr. 1, 1986, 86-1 C.P.D. ¶ 306 at 7.


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General Counsel

^{2/} This contention is timely under our Bid Protest Regulations. 4 C.F.R. § 20.2(a)(1) (1987). BDC states it did not "learn that AMD's quotation did not include crane service" until it received the agency report because, unlike the copy of the worksheet contained in the agency report, the copy it received in response to its FOIA request did not clearly show the notation.