



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Violet Dock Port, Inc.
File: B-235706
Date: September 28, 1989

DIGEST

Where contracting agency determines that an accelerated performance schedule reflects the government's need to achieve cost savings, record does not show otherwise, and protester fails to specify why the schedule is restrictive of competition except to indicate that it alone requires an indefinitely longer period of time to ready itself for performance, there is no basis for the General Accounting Office to object to the schedule established by the agency.

DECISION

Violet Dock Port, Inc., protests the performance schedule contained in invitation for bids (IFB) No. DTMA-89-B-90019, issued by the Maritime Administration, United States Department of Transportation, for the layberthing of a vessel in the Gulf Coast area. The protester contends that the 17-day period between bid opening and the scheduled start of performance unduly restricted competition.

We deny the protest.

The IFB contemplated a contract for berthing services at a commercial shipyard for a vessel which is part of the Ready Reserve Fleet of government-owned vessels designed to provide the United States with strategic sealift capability. As a part of this program, Violet is presently performing under the second option year of a contract for berthing services awarded by the Maritime Administration in 1986. Among other things, the contract obligates Violet to provide berths at a specific per diem rate, meeting specifications relating to safety facilities and space necessary to perform ship repairs, and can be terminated by the government upon 30 days' notice.

046598/139631

In January 1989, the Maritime Administration notified Violet that it intended to place two crane ships, which were scheduled for June delivery, in berthing space at its facility under the existing contract. Since the berth intended for these ships was occupied by a government-owned vessel, THE CAPE INSCRIPTION, the IFB was issued in part in an attempt to find suitable commercial berthing for the vessel to be displaced. In addition to this need for space as a result of the anticipated June delivery of the crane ships, the agency reports that its requirements for shipberthing had been refined in terms of the need for enhanced safety and additional space to service ships since Violet's 1986 contract was awarded, and that it had a need to conduct a survey to determine whether Violet's option prices were still the most advantageous.

When issued on May 1, the IFB contained a May 31 bid opening date and a June 15 date for the start of contract performance; however, on May 25, bid opening was rescheduled to June 6 and the start of contract performance was extended to June 23, after the agency determined that the two crane ships would not be berthed at Violet's facility in June as originally planned.

At the bid opening five bids were received:

Bidder	Berthing Price + Transport. = Total		
Sealift (Texas)	\$1,409,750	\$15,625	\$1,425,375
Violet	\$1,819,088	\$ -0-	\$1,819,088
Mobile Dock	\$1,813,440	\$ 8,000	\$1,821,440
Sound Marine	\$2,902,545	\$ 625	\$2,903,170
Sealift (Florida)	\$6,760,650	\$15,125	\$6,775,775

Although the low bidder took no exception to the performance start date, its bid was found nonresponsive because its facility was located in a geographic area excluded by the IFB. Violet's bid was found nonresponsive because, in a letter accompanying its bid, the protester stated that it did "not believe that it is possible for any potential bidder to prepare and provide the required layberth prior to the stated start date of June 23, 1989," and that, "[t]herefore, in the event that Violet is the low bidder, a rescheduled start date will be required."

The remaining bidders took no exception to the IFB requirements, although the agency regarded the two highest bidders' prices to be excessive because they exceeded the prices being paid to Violet under its current contract, whereas the three lowest prices received, including the protester's,

represented a considerable savings to the government in comparison to Violet's contract prices.

While not disputing the agency's revised requirements for enhanced safety features and additional pier space, Violet essentially questions the immediacy of these needs in light of the May 25 announcement that the CAPE INSCRIPTION would not be displaced by crane ships in June as originally planned. In this regard, the protester argues that, once the agency no longer had a pressing need to move the CAPE INSCRIPTION, it should have amended the IFB to extend the starting date of performance in order to permit as many potential bidders as possible to compete by affording them enough time to ready their facilities to meet the agency's new technical requirements. In Violet's view, the agency's refusal to amend the IFB was unreasonable and unduly restricted competition.

In response, the agency reports that, based on its experience in administering multiple layberthing contracts, it had reason to believe that there were an adequate number of presently available Gulf Coast shipyards capable of offering lower prices than those afforded by Violet's contract, with facilities that could accommodate its revised technical needs without the necessity of major, time-consuming renovations. Thus, the agency concludes that its minimum needs were reasonably expressed through the IFB in terms of safety, pier size and cost savings. With regard to cost, the agency submits that it stood to suffer additional economic harm each day it extended the performance schedule--both in terms of continuing to pay excessive prices under Violet's contract and in terms of higher prices which could reasonably be expected from potential bidders passing through "lost" revenues for any further time their berths were held out of the commercial marketplace in anticipation of receiving a government contract.

Under these circumstances, the agency argues that it acted reasonably in not tailoring the performance schedule to the imprecise preferences of only one bidder--Violet--who alone stood to profit in terms of contract revenue through an extended performance schedule, whose facilities were reasonably believed to require major, time-consuming

renovations to meet the IFB requirements,^{1/} and who, even assuming it was willing and able to undertake the effort to ready its facility to be in compliance with the IFB, failed to commit itself to a date when it would be able to perform.^{2/}

When a protester challenges an IFB requirement as being unduly restrictive of competition, the initial burden is on the agency to establish prima facie support for the contention that the requirement is justified. Abel Converting Inc., B-224223, Feb. 6, 1987, 87-1 CPD ¶ 130. We determine the adequacy of the agency's justification by examining whether it is logical. Id. If it is logical, then the protester must show that the agency's position is clearly unreasonable. GE American Communications, Inc., B-233547, Feb. 17, 1989, 89-1 CPD ¶ 172. It is insufficient to establish only that one potential bidder cannot comply with the requirement in issue. Carey Machinery & Supply Co., Inc., B-233455, Feb. 17, 1989, 89-1 CPD ¶ 171.

In our view, the agency has logically explained its decision not to extend the disputed performance schedule in terms of the cost savings it expected to obtain as the result of a shorter schedule. See Informatics, Inc., 58 Comp. Gen. 750 (1979), 79-2 CPD ¶ 159. In deciding what particular performance schedule to use in an IFB, contracting officers are obligated to consider, among other things, market conditions and industry practices. Federal Acquisition Regulation (FAR) § 12.102(a)(3) and (5). In doing so here, the Maritime Administration concluded that these conditions and practices warranted an accelerated performance schedule in order to obtain maximum competition with the likelihood

^{1/} Violet takes no exception to the agency's position that it would take a number of months after obtaining necessary approvals from various authorities for the protester to add an additional 80 feet to its pier size to permit ship servicing as required by the IFB, without having to resort to the procedure of lowering a vessel's stern ramp on to a rented barge--a cumbersome and expensive process which is presently necessitated by the physical limitations of Violet's facility.

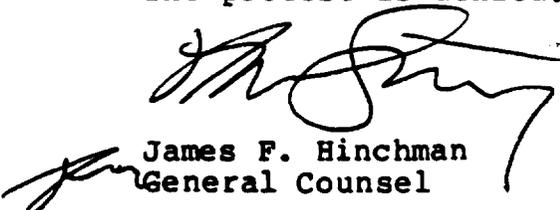
^{2/} In response to a May 31 telephonic request, Violet indicated that 90 days would be a reasonable amount of time prior to the commencement of performance; however, as the record reflects, neither its prior request for an extension nor the qualification in its bid stated a time when it would be ready to perform or described in any detail why it believed additional time was necessary.

of lower prices. We note that this analysis of the relevant market comports with the terms of Violet's own contract, which acknowledges an ever present need within the industry to keep berths full and income-producing in that it permits Violet to negotiate for the right to use berths for commercial enterprise purposes whenever the government vacates them for 30 days or more. In contrast, all the protester has offered as "evidence" that the agency's reading of the market was clearly unreasonable is its own unsupported contention that the market will likely respond better to a less stringent performance date.

We also find that the protester has not shown that the performance schedule contained in the amended IFB operated to exclude any other bidders from competing, or that the agency otherwise acted unreasonably in not further amending the IFB to suit Violet's own rather ill-defined needs. The record reflects that the only other bidder to question the performance schedule did so prior to the amendment extending the performance date, and later expressed satisfaction with the amended date.

Moreover, the record further reflects that, apart from continuing to express its own dissatisfaction with the performance schedule contained in the IFB, Violet has provided neither the agency nor this Office with any details as to precisely why it required more time to comply with the agency's revised technical requirements, and has provided nothing more than its own unsupported speculation that other bidders also needed more time. Under these circumstances, we are presented with no legal basis to object to the reasonableness of the agency's decision not to further extend the performance schedule in the hope of obtaining, at best, one additional responsive bidder.

The protest is denied.



James F. Hinchman
General Counsel