

R. Arsenoff



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dunrite Tool & Die Corp.

File: B-237408

Date: February 23, 1990

Paul G. Dembling, Esq., Schnader, Harrison, Segal, & Lewis, for the protester.
John A. Dodds, Esq., Office of the General Counsel, Department of the Air Force, for the agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's interpretation of an amendment as deleting option requirements is unreasonable where a reading of the solicitation as a whole evidences no such intent and where the amendment did not specifically alter the section of the solicitation which required the pricing of options.
2. Where protester's prices for various line items were submitted sequentially in three separate documents and confirmed in its best and final offer, agency had no reason to question whether the option prices contained in the first of these documents, and unamended by the others that followed, were current. Thus, agency acted reasonably in using the protester's option prices as submitted in its initial proposal during the final evaluation of offers.

DECISION

Dunrite Tool & Die Corp., protests the award of a fixed-price contract to Lockley Manufacturing Co., Inc., pursuant to request for proposals (RFP) No. F41608-89-R-0912, issued by the Department of the Air Force for practice bombs. The protester argues that amendment No. 0005 to the RFP deleted line items for option quantities and that the agency improperly evaluated proposals as if those quantities were still in the solicitation. According to the protester, this error skewed the evaluation so that Lockley's proposal was improperly determined to be low.

We deny the protest.

The RFP, which contemplated an award to the low offeror, was issued on February 8, 1989. The schedule of items to be priced was divided into three separate parts. "Bid" A consisted of two line items for first article reports and documentation to be priced in the event that first article testing was required, a line item for an initial quantity of 593 practice bombs, and a line item for incremental pricing for additional quantities of bombs during the base contract period. "Bid" B consisted of line items to be priced in the event no first article testing was required and contained the same two line items for initial and additional quantities of bombs as "Bid" A, with no line items for data. The third schedule section contained the following heading: "CONTRACT LINE ITEMS 0002 AND 0003 ARE APPLICABLE TO BID A AND BID B." Item 0002 of the schedule required prices for bombs to be delivered during a 1-year option period, and item 0003 sought prices for acceptance data to be delivered during the base period and the option year.

Dunrite's initial proposal, dated April 5, contained prices for the bombs under "Bid" B only and prices for option quantities under item 0002; it did not contain prices for any line items under "Bid" A or for the acceptance data as required by item 0003 of the third section of the schedule which, according to the RFP was applicable to both "Bids" A and B. During discussions on May 9, Dunrite was informed that first article testing would be required and that the firm would also have to submit prices for the acceptance data. This advice was confirmed by amendment 0004 issued the same day.^{1/}

By letter dated May 16, Dunrite responded to amendment 0004 by providing prices for first article test reports and documentation as required by "Bid" A and prices for acceptance data as required by item 0003 of the third section of the schedule. Dunrite's May 16 letter did not include prices for the bombs or the option quantities which had been included in the protester's original proposal. Amendment 0005 was issued on June 5. In addition to instructing offerors to "Delete Bid/Proposal B in its entirety," the amendment also restated all the line items contained in "Bid" A without substantive change. The third section of the schedule pertaining to the option quantity and data, items 0002 and 0003, was not mentioned in

^{1/} Amendments Nos. 0001 through 0003 made no changes to the RFP which are pertinent to this protest.

amendment 0005 nor did the amendment delete or alter the RFP clause governing the exercise of options.

On June 9, Dunrite responded to amendment No. 0005 by submitting on the schedule provided with the amendment prices for the first time for the initial order and additional base period practice bombs as required by "Bid" A. These prices were identical to the prices it previously submitted without regard to first article testing under "Bid" B. By letter dated June 21, offerors were afforded an opportunity to submit BAFOs; on June 22, Dunrite submitted a letter constituting its BAFO in which the firm stated that its "original proposal will remain unchanged."

The agency totaled Dunrite's prices for the various items required by the amended RFP as follows:

<u>Item</u>	<u>Source</u>	<u>Amount</u>
First Article Documents	May 16 submission	\$ 38,700
Initial Order	June 9 submission	\$2,164,450
Additional Quantities	June 9 submission	\$4,112,436
<hr/>		
Subtotal, "Bid" A		\$6,315,586
Option Quantities	April 5 proposal	\$3,419,515
Acceptance Data	May 16 submission	\$2,000
<hr/>		
TOTAL EVALUATED PRICE		\$9,737,101

Lockley's price for "Bid" A was \$6,335,645, which, when added to its price of \$3,027,550 for the option quantities and acceptance data, resulted in a total evaluated price of \$9,363,195.2/ Accordingly, Lockley was awarded the contract on September 28.

In its protest, Dunrite principally objects to the inclusion of the option and data requirements in items 0002 and 0003 as part of the evaluation. In this regard, the protester argues that by stating that "Bid" B was deleted "in its entirety," amendment No. 0005 dropped all of the line items set forth in the schedule under "Bid" B "including" the line items representing the option and data requirements. Thus, Dunrite argues that when the agency later decided to "change" its requirements to again include the option quantities and data requirements, it allegedly acted improperly in not advising the protester and giving it an opportunity to submit revised option and data prices.

2/ A third offer was evaluated at \$11,708,802.

Finally, Dunrite suggests that a June 8 conversation between the agency negotiator and its own president confirmed Dunrite's position that amendment No. 0005 had deleted the option quantities insofar as the negotiator is alleged to have said: "The amendment speaks for itself. If the option quantity is not there then it is not there."

In response, the Air Force submits that the deletion of "Bid" B did not in any way affect the continuing requirement to submit option or data prices since items 0002 and 0003 were not a part of "Bid" B.

Where, as here, a dispute exists as to the actual meaning of an RFP provision, we will read the RFP as a whole and in a manner giving effect to all of its provisions in determining which interpretation is reasonable. Collington Assocs., B-231788, Oct. 18, 1988, 88-2 CPD ¶ 363. Moreover, where the terms of an amendment do not specifically alter a portion of a solicitation, we will not read them as doing so. See Smith-Vos Constr. Co., B-215900, Dec. 10, 1984, 84-2 CPD ¶ 644.

We agree with the agency that the portion of the RFP schedule pertaining to the option quantity (item 0002) and acceptance data (item 0003) was not a part of "Bid" B and, therefore, in our view, Dunrite's contrary interpretation is simply not a reasonable one.

First, the protester's view that items 0002 and 0003 are a part of "Bid" B is not consistent with the structure of the RFP schedule. The two items comprising "Bid" B (items 0001AE and 0001AF) are separated from items 0002 and 0003 by the phrase: "CONTRACT LINE ITEMS 0002 AND 0003 ARE APPLICABLE TO BID A AND BID B." Further, line items 0002 and 0003 refer to requirements which are distinct from the bomb quantities represented by the "Bid" B line items. Also, their designation as items "0002 and 0003" is not consistent with their inclusion in "Bid" B, whose items are designated "0001AE" and "0001AF." It seems to us if the option and data items were to be included in "Bid" B, they would logically be designated as items 0001AG and 0001AH.

The amendment itself states that all of the terms and conditions of the RFP are to remain unchanged except as specified in the amendment. Since it is our view that the option and data items were not a part of "Bid" B and since these items were not specified in the amendment, they remained a part of the RFP subsequent to the issuance of amendment No. 0005. See Smith-Vos Constr. Co., B-215900, supra. This conclusion is further bolstered by the fact that the RFP clause governing the exercise of options was

retained and the fact that both items pertain equally to the remaining "Bid" A schedule. Therefore, there would be no practical reason to remove these items along with "Bid" B.

The protester also argues that it reasonably assumed that the Air Force was no longer interested in option quantities and data because amendment No. 0005 provided no spaces for prices on these items. Since, as discussed above, we find that the terms of the amendment did not affect the agency's existing and continuing requirement for the items, we do not believe that the Air Force was again required to provide pricing blanks for items already priced by the offerors. As for Dunrite's suggestion that it was unfairly denied an opportunity to submit revised prices for the items as a result of the format of the amendment, we note simply that the protester had earlier submitted a revised proposal in the form of a letter without regard to amendment format and we further note that the best and final offers process afforded a final opportunity to revise prices. The problem, in our view, was not a lack of opportunity to revise prices, but a misreading on Dunrite's part of what was actually required and reasonably communicated by the RFP as amended.

With regard to the alleged June 8 conversation concerning amendment No. 0005, the negotiator states in a sworn affidavit that he has no recollection of such a conversation and that "no one from Dunrite Tool and Die ever asked me if line items 0002 and 0003 were deleted by any amendment." Moreover, Dunrite was obligated by the terms of the RFP to seek written confirmation concerning the meaning of amendment No. 0005 if it had any doubts. See Questek, Inc., B-232290, Aug. 19, 1988, 88-2 CPD ¶ 166.

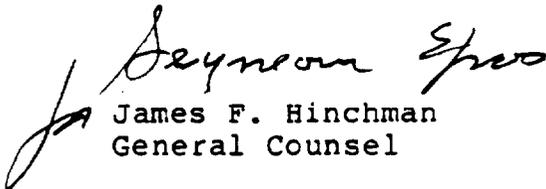
Thus, we do not agree with Dunrite's argument that it should have received the award based on its low prices for the base items without considering the option and data prices. Nevertheless, Dunrite also maintains that even if amendment No. 0005 did not delete line items 0002 and 0003, the Air Force should have recognized that the protester had inadvertently failed to submit new prices for those items and brought the matter to its attention. Further, in this connection, the protester states that it was improper for the agency to use its "old" prices for items 0002 and 0003 as contained in its April 5 and May 16 proposals.

The protester's position in this regard presumes that the Air Force had reason to know that the firm's option and data prices submitted on April 5 and May 16 were not current. In our view, the record does not support such a conclusion. Dunrite's prices on the various items required by the RFP

were submitted in three separate sequential stages on April 5, May 16, and June 9. Moreover, we believe that Dunrite's own BAFO letter of June 22 served to confirm that the company's original prices, as submitted on the above dates, remained unchanged as its final offer. Thus, we find no basis to conclude that, under the circumstances, the agency had a duty to question allegedly "omitted" or outdated option prices any more than it had any duty to verify Dunrite's other prices as submitted throughout the procurement process. Therefore, we do not view the agency's use of the option prices contained in Dunrite's initial proposal of April 5 and unamended by any later submissions as an improper evaluation of "old" prices.

Finally, we point out that the record contains no indication that Dunrite would have altered its proposed option prices to its competitive advantage had the oral advice been clearer or had the disputed amendment been even more explicit. Dunrite's prices for the practice bombs did not change from its final proposal under part B to its later proposal under part A and the record contains no explanation as to how or why its prices on the option quantities would have changed if the protester had accurately read amendment 0005. Astro-Med, Inc.--Request for Reconsideration, B-232131.2, Dec. 1, 1988, 88-2 CPD ¶ 545.

Since we find that the Air Force acted reasonably in totaling the item prices submitted by Dunrite as it did and since the record discloses no improprieties with respect to the evaluation of Lockley's prices, the protest is denied.^{3/}


James F. Hinchman
General Counsel

^{3/} At the protest conference and in its later comments, Dunrite argued that Lockley's offer was impermissible unbalanced based on the assertion that certain of its first article testing prices were unrealistically low, especially in comparison to Dunrite's own prices for the same items. In addition to failing to argue that any of Lockley's other prices were unrealistically high, which is a prerequisite to a conclusion that an offer is unbalanced, we note that Dunrite's primary reliance on a comparison to its own prices to support its conclusion is simply insufficient to show that another offeror's prices are unbalanced. Unidynamics/St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609.