

P. Ahern



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Armour of America

File: B-237690

Date: March 19, 1990

Debra J. Moore, Esq., Watkiss & Saperstein, for the protester.
Pamela J. Reiner, Esq., and Stuart Young, Esq., Office of the General Counsel, General Services Administration, for the agency.
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DIGEST

Protest challenging contract award for protective vests as inconsistent with requirements in request for quotations (RFQ) is sustained where the record indicates that awardee's vest did not comply with at least three of the RFQ requirements, and it appears protester may have lowered its price substantially had it known that the requirements were waived.

DECISION

Armour of America protests the award of purchase order No. QPU-B-QY575-1 to American Body Armour & Equipment, Inc. (ABAE), under a General Services Administration (GSA) request for quotations (RFQ). The purchase order, issued under small purchase procedures (Federal Acquisition Regulation, part 13), was for helicopter pilot vests with armor inserts. The protester contends that the award was improper because ABAE's quoted product did not meet several of the RFQ specifications.

We sustain the protest.

The procurement is the result of a requisition submitted to GSA by the Bureau of International Narcotics Matters, Narcotics Assistance Unit (NAU), Department of State, for vests to be used by helicopter pilots in Mexico. While there are Federal Supply Service (FSS) multiple award

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schedule contracts covering body armor, GSA determined that because the needs of NAU were either different from or more specific than the FSS body armor, placement of an order under an FSS contract would not meet the user's needs. Accordingly, GSA requested off-schedule quotations from five prospective suppliers on the basis of written specifications, for various quantities of "regular" and "standard" sized vests fitted with ceramic/kevlar composite armor inserts. The vest configuration was to cover the chest and torso side areas of the body; back coverage was not required. The specifications, as amended, further required the vests to be manufactured of kevlar cloth and meet a certain ballistics protection level (known as the National Institute of Justice (NIJ) Standard 0101.03) and prohibited ferrous or nonferrous metals in the construction of the inserts. Additionally, the specifications required that the inserts and the kevlar in the vests have 60-month warranties.

Five firms submitted quotations on September 12 through 29, 1989. ABAE submitted the low aggregate quotation of \$17,849.28, and GSA issued a purchase order to that firm on October 3. The protester had submitted the next low quotation, in the aggregate amount of \$24,802 (our calculation actually shows a total price of \$24,868). While the awardee's price solely for the vests was \$754 more than the protester's, the protester's price for the ceramic/kevlar inserts was \$7,773 more than the awardee's, for a net price difference of \$7,019 between the awardee and the protester. Delivery has been completed under ABAE's contract.

Armour argues that ABAE's quotation should have been determined unacceptable because it deviated from the RFQ requirements in three respects: (1) the armor inserts are steel-backed, although metal was prohibited in the insert construction; (2) the vests are "one size fits all," rather than the standard and regular sizing required; and (3) the garment portion of the vest is covered by only a 36-month warranty, contrary to the 60-month warranty required for the kevlar in the vest.^{1/} Armour contends that it was prejudiced by GSA's failure to inform it of the relaxed specifications, arguing that had it known that either one size fits all vests or steel in the composition of the inserts were acceptable it could have submitted a quotation

^{1/} While the protester originally argued that the awardee's inserts were made of ceramic only, rather than the ceramic/composite called for, the record as it developed indicated that the awardee's inserts do in fact contain a ceramic/kevlar composite.

lower than that submitted by ABAB. According to the protester, because steel is less costly than kevlar, it could have lowered its offered cost had it known inserts containing steel were permissible. Similarly, the protester argues that, because one size fits all vests are not tailored to fit the wearer, they can be manufactured using less kevlar material than sized vests, at a substantial cost savings.

GSA maintains that the award was proper since, although ABAB's quote contained minor deviations from the requirements, the firm's quote met the needs of the government at the lowest price without prejudicing Armour. GSA acknowledges that steel is used in the awardee's insert backing, but asserts that this is unobjectionable because it is used to provide stability and enhance the ballistics (as ABAB indicates in an affidavit it submitted in connection with the protest). Similarly, GSA explains that the awardee's one size fits all adjustable vest meets the government's needs because it fits the range of heights and body sizes needed by the government. Finally, GSA notes that, while ABAB's 36-month warranty for the garment portion of its vests was not in strict compliance with the RFQ, there was no prejudice to Armour because that firm did not indicate in its quote what warranty it was offering, and the warranty on its FSS vests is for 48 months, also a lesser period than the 60 months specified in the RFQ.

All procurements, including small purchases, must be conducted consistent with the concern for a fair and equitable competition that is inherent in any procurement. Brennan Assocs., Inc., B-231859, Sept. 28, 1988, 88-2 CPD ¶ 295. In this connection, it is fundamental that an agency may not solicit quotations on one basis and then make award on a materially different basis when other vendors would be prejudiced by such an award. Discount Mach. and Equip., Inc., B-220949, Feb. 25, 1986, 86-1 CPD ¶ 193. Where an agency's needs change and create a material discrepancy between the RFQ's specification and its actual needs, the RFQ should be amended and new quotes solicited. Discount Mach. and Equip., Inc., B-220949, supra; LePrix Elec. Distribs., Ltd., B-212078, Nov. 15, 1983, 83-2 CPD ¶ 562.

We find that material RFQ requirements were relaxed only for ABAB, that Armour was prejudiced by the award based on the relaxed requirements, and that the competition therefore was not conducted in a fair and equitable manner.

First, concerning the insert construction, the awardee has acknowledged that its offered inserts are constructed with a metal backing, notwithstanding the prohibition against the

use of ferrous and nonferrous metals. Although it is not clear from the record precisely how integral the steel is to the protective capability of the inserts, the awardee itself characterizes the function of the metal backing as enhancing the ballistics, and there is nothing in the record indicating that ABAE's offered inserts could pass the required ballistics testing without the steel backing. Indeed, the ballistics test results indicate that the awardee's tested insert contained a one-fourth inch trauma pad, which apparently is the steel backing, and the NIJ Standard itself recognizes that armor constructed of metal could meet the standard. See Ballistic Resistance of Policy Body Armour; NIJ Standard 0101.03, National Institute of Justice, Technology Assessment Program, April 1987, at page 12.

We also find that, GSA's position notwithstanding, Armour's quote did not take exception to the 60-month warranty requirement for the kevlar in the vests, and that the requirement therefore was waived only for ABAE. In this regard, nothing in Armour's quote offered a reduced warranty or otherwise questioned the 60-month requirement, and since the RFQ specified a required warranty rather than request each firm to propose a warranty, we think Armour's silence on this point in its quote was sufficient to indicate its intent to offer what was specified. See generally World Wide Diesel, Inc., B-205599, May 6, 1982, 82-1 CPD ¶ 433. ABAE, on the other hand, did take express exception to the 60-month requirement, by offering a 36-month warranty instead.

Further, it is clear that ABAE's one size fits all vests did not comply with the RFQ requirement for standard and regular sizes.

An award based on a quote that deviates from RFQ requirements is objectionable where other firms in the competition are prejudiced by the award, that is, where the other firms might have been able to meet the agency's needs if afforded an opportunity to compete based on the relaxed requirements. Discount Mach. and Equip., Inc., B-220949, supra. Here, the record indicates the outcome may have been different had Armour been permitted to quote on the same relaxed requirements as ABAE. The agency has not rebutted the protester's assertion that steel is far less costly than kevlar, and it follows that enhancing ballistics with steel backing therefore would be less costly than instead meeting the ballistics requirements with additional kevlar. We find no reason to question Armour's assertion that it would have incorporated steel into its inserts had it known that GSA

waived the RFQ prohibition against including metal in the construction.^{2/}

Further, it is well-established that warranty provisions generally are material requirements that must be met in offers without qualification because they affect the government's rights under the resulting contract. See Montgomery Furniture Co., B-229678, Mar. 1, 1988, 88-1 CPD ¶ 212. The 60-month warranty, which would require that the kevlar in the vests last 2 years longer than the 36-month warranty offered by ABAE, reflects a quality standard that clearly could have an impact on the way a vest is designed or constructed as well as on price. We note that one of the reasons GSA procured the vests off-schedule was because the NAU specifically requested vests with the 60-month warranty, which was not offered under the FSS.

Finally, while the magnitude of the cost difference between sized vests and one size adjustable vests is not clear, Armour asserts, and GSA does not dispute, that the tailoring involved in making the sized vests entails the use of more kevlar than is used for the one size adjustable vests; Armour therefore could have lowered its price had it known the standard sizing requirement had been waived.

In defense of its action, GSA has cited several cases in which agencies solicited quotations from vendors listed on a mandatory FSS and ordered from the schedules. Kardex Sys., Inc., B-225616, Mar. 12, 1987, 87-1 CPD ¶ 280; Spacesaver, B-224339, Aug. 22, 1986, 86-2 CPD ¶ 219. In those cases we held that a quotation in response to an RFQ need not comply precisely with the terms of an RFQ; rather, a purchase order from a schedule for quoted equipment which may not meet every specification in the RFQ is permissible if it meets the agency's legitimate needs at the lowest price. This is because the quotations are not offers subject to government acceptance but, rather, are informational responses that may be used as the basis for issuing a delivery order under a schedule contract. Id. In this case, the agency did not want and did not purchase an item from the schedule. Moreover, even in the case of FSS purchases, vendors must

^{2/} Although ABAE's quote did not indicate that steel was used in the insert construction, GSA subsequently became aware of the steel backing on the inserts when it rejected ABAE's attempted delivery under the contract due to mispositioning of the inserts in the vests. ABAE corrected this problem and GSA subsequently accepted delivery notwithstanding the steel backing, thereby waiving the RFQ's prohibition against ferrous and nonferrous metals.

have an opportunity to compete on an equal basis and agencies may not vary from a requirement stated in the RFQ where this would result in prejudice to vendors relying on the solicitation. Spacesaver, B-224339, supra.

We conclude that, had Armour been permitted to quote on the three relaxed requirements, its price could have been reduced such that the outcome of the competition would have been different. It therefore was improper to make award to ABAE on the basis of the relaxed requirements without affording Armour and other firms an opportunity to quote on those requirements. We sustain the protest on this basis.

Ordinarily, where a competition has not been conducted on a proper basis, we will recommend that the deficiencies be corrected and that the competition be reopened. Since delivery of the vests has been completed under ABAE's contract, such relief is not practicable here. However, by separate letter of today, we are advising the Administrator of our decision. Further, we find Armour entitled to reimbursement of its protest costs, including attorneys' fees. 4 C.F.R. § 21.6(d) (1989). Armour should submit its claim for such costs directly to the agency. 4 C.F.R. § 21.6(e).

The protest is sustained.



Acting Comptroller General
of the United States