



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Petchem, Inc.
File: B-227109
Date: September 16, 1987

DIGEST

In a procurement for the time charter of a tug and barge, allowing the substitution, after the conclusion of discussions, of an acceptable vessel in place of the proposed vessel that apparently would not meet a performance requirement, is proper where the solicitation as a whole treated vessel characteristics specified in the proposals as performance requirements that would not preclude finding an offer technically acceptable.

DECISION

Petchem, Inc. protests the award of a contract to Marvest, Inc. for the fixed-price time charter of a tug and barge under Department of the Navy, Military Sealift Command (MSC), request for proposals (RFP) No. N00033-87-R-1101. Petchem primarily alleges that the barge offered for service by Marvest was technically unacceptable, and that the agency improperly permitted Marvest to substitute an acceptable barge after receipt of best and final offers (BAFOs), without reopening discussions with all offerors. We deny the protest.

The solicitation was for the charter of vessels, with master and crew, for the shipment of miscellaneous cargo. Offerors were requested to submit rates on a per diem basis for full operational status, excluding fuel, for a firm period and each of two option periods.

Section C of the RFP, entitled "Description/Specifications/Work Statement," included vessel characteristics, a description of ports and cargoes, and frequency of service. The vessel characteristics, as amended, included a draft (depth) limitation of 7 feet and open deck space of a minimum of 6,700 square feet. Section H, "Special Contract Requirements," stated that "the work under this contract shall be performed in accordance with the following specifications," provided that the contemplated contract was to be performed

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in accordance with the specifications and vessel characteristics, and provided blank spaces for detailed vessel information, including name, official number, and dimensions, as well as draft and open deck space. The RFP provided for an inspection of the vessels prior to delivery. The RFP provided no technical evaluation criteria, with award to be made to the lowest cost, technically acceptable offeror.

Marvest proposed to perform using a tug and barge. After discussions and submission of BAFOs, Marvest was the apparent low offeror. During a preaward survey, Marvest discussed how it intended to install required bulwarks (perimeter walls) on the barge, and it became apparent to the agency that Marvest's bulwark installation plan might not preserve the 6,700 square feet open deck requirement. Thereafter during the survey, Marvest offered a larger barge, without a change in price or terms, that would provide 7,000 square feet of open deck space after installation of the bulwarks. MSC accepted the substitution, determined that Marvest was responsible, and awarded Marvest a contract based on the substituted barge.

Petchem maintains that the agency should have rejected Marvest's BAFOs for failure to conform to the material requirements of the solicitation or, alternatively, should have issued a second request for BAFOs to all firms in the competitive range. Specifically, the protester maintains that since it was apparent from the face of Marvest's offer that the overall dimensions of the barge Baymaster provided 6,750 square feet of open deck space, MSC should have known that installation of the bulwarks would reduce the space below the required 6,700 square feet.

The agency contends that the issue presented by Petchem's protest is one of responsibility, that is, its ability to transport the cargo as required; the information requested by the RFP as to the vessels an offeror intended for performance was simply to expedite and facilitate the determination of contractor responsibility and was not relevant to the acceptability of an offer. MSC thus maintains that the discussions held with Marvest after receipt of BAFOs were part of the preaward survey when questions properly were raised concerning the ability of Marvest's intended vessels to perform in compliance with the specifications, and that there was nothing improper, violative of the RFP, or prejudicial to other offerors in its affirmative determination of responsibility based on Marvest's access to the substitute barge.

We find the substitution unobjectionable. While Section C did characterize the open deck space feature as necessary

for meeting the minimum acceptable cargo requirements, the RFP, as a whole, fairly clearly, we think, indicated that the specific design features of the offered vessels would not be considered until the time of performance. We find particularly persuasive in this regard the fact that the specific vessel characteristics--including draft and dimensions--were requested not for technical evaluation purposes, but under Section H, "Special Contract Requirements," which required that the work "be performed" in accordance with the listed specifications, including the vessel characteristics; the RFP nowhere stated that offers would be rejected as technically unacceptable based on the failure of a proposed vessel to possess specified vessel characteristics. Finally, the RFP did not provide for inspection or evaluation of the offered vessels during the technical evaluation process. Instead, the RFP provided, under Section I ("Inspection"), that the vessels and equipment would be subject to a suitability inspection for the required services "prior to delivery."

Accordingly, we believe there was no impediment to allowing the substitution of vessels after the close of discussions for the purpose of assuring the offeror's ability to perform as required. Again, the key, we think, was that the RFP as a whole indicated MSC wanted an acceptable ship when it was needed--at the time of performance. Because this was a time charter of vessels with master and crew and thus included services, we think the specific vessel information under Section H properly was, as MSC maintains, for consideration in the determination of an offeror's ability to perform the transportation services as required. Thus, we conclude that MSC properly permitted Marvest to substitute after discussions. See generally General Offshore Corp., B-224452, Oct. 16, 1986, 86-2 CPD ¶ 437.

The protest is denied.

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