



Comptroller General
of the United States

Washington, D.C. 20548

Form 124
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Decision

Matter of: Unitor Ships Service, Inc.

File: B-245642

Date: January 27, 1992

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James J. Janosek, Esq., Alan W. Mendelsohn, Esq., and Richard S. Haynes, Esq., Department of the Navy, for the agency.

John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where agency made award based upon miscalculation of pricing to other than the low evaluated offer, it properly took corrective action of terminating the improperly awarded contract and making award to the low priced offeror.

2. Post-award meeting at which an unsuccessful offeror under a solicitation for chemical treatment services to ships objected to the agency's evaluation of its price proposal, thereby prompting the agency to take corrective action because of its determination that its evaluation of the unambiguous price proposal was clearly unreasonable, does not constitute improper post-best and final offer discussions, but rather is a clarification.

DECISION

Unitor Ships Service, Inc. protests the award of a contract to Drew Ameroid Division of Ashland Chemical, Inc. (Drew), under request for proposals (RFP) No. N00033-90-R-3038, issued by the Military Sealift Command (MSC), Department of the Navy, for chemical treatment services to MSC's fleet of ships. Unitor argues that MSC failed to evaluate Drew's price proposal reasonably or in accordance with the RFP evaluation criteria, and improperly engaged in post-best and final offer (post-BAFO) discussions with Drew regarding its pricing. The specific matters protested by Unitor concern the Navy's evaluation of the surcharges proposed by Drew for the delivery of chemical products at various ports, Drew's

calculations concerning its proposed dosages of the chemical hydrazine, and Drew's proposed "one-step additive package" for treatment of the ships' auxiliary boilers.

We deny the protest in part and dismiss it in part.

The RFP, issued on December 11, 1990, contemplated the award of a requirements contract for a 1-year base period and four 1-year options. The work encompassed in the RFP included the provision of chemicals, chemical test kits, and chemical treatment support services for the boilers, diesel engine cooling systems, and various ancillary equipment and systems, for MSC's fleet of ships. The products and services are to be provided on a worldwide basis. The RFP stated that award would be made to the responsible offeror submitting the lowest priced, technically acceptable proposal.

The RFP required that offerors demonstrate in their proposals their understanding of the work contemplated by providing, in part, a detailed description of the chemical treatments and quantities proposed to perform the contract in accordance with the RFP's statement of work (SOW). The RFP specified that the quantities of treatment chemicals calculated here would be a major factor in evaluating each offeror's technical approach to the SOW.

To enable offerors to calculate the proposed quantities of chemicals required, the solicitation, as amended, provided estimates of the water and sewage capacities of the ships that would require treatment and the manner in which the ships would be used.¹ For example, the RFP, as amended, stated that for the purposes of calculating chemical treatment for the main propulsion boilers, offerors were to assume that the ships would be under a full load 30 percent of the time for underway steaming, and specified that in this operating condition offerors were to assume and use a factor of five times the boiler capacity in volume per hour, and for the remaining 70 percent of time, where the ships would be in port or slow steaming, a factor of .1 times the boiler capacity would be applicable. Hydrazine was stated to be preferred treatment for the boilers.

The RFP included a pricing schedule to be completed by the offerors. For many line items, offerors were to specify the quantities of chemicals and/or products proposed and their prices. Other line items required prices for various services. For example, for contract line item number (CLIN) 0002, offerors were required to enter their estimated

¹The quantity of chemicals required for treatment depends on both the size of the ships' tanks and how the ships are being used.

quantities of treatment chemicals, and their unit and extended prices, for propulsion boiler treatment in accordance with the SOW for the base year. CLIN 0020 pertained to the provision of engineering services and emergency service calls.

In recognition of the requirement in the SOW that the chemicals be provided to MSC's ships at numerous ports "worldwide on an as needed, where needed, basis," the schedule included for the base year, and each of the 4 option years, contract line items on which offerors were to provide "surcharges" for the delivery of their chemical products to the various ports listed. Each of these surcharge line items contained 37 sub-line items representing a port or ports worldwide.²

The agency received proposals from Drew and Unitor by the RFP's February 8, 1991, closing date. Discussions were held with both offerors, followed by the submission of revised offers and BAFOs. The agency found both Drew's BAFO and Unitor's BAFO technically acceptable. According to the agency's price evaluation, Drew's total evaluated price for the initial 1-year base period and 4 option years was \$3,910,578.25. Unitor's evaluated BAFO price was \$2,935,286.12. The agency made award to Unitor on July 10, 1991, as the low priced, technically acceptable offeror.

After award Drew met with MSC and asserted that its proposal had been miscalculated in the area of surcharges. A total of \$1,449,044.28 of Drew's evaluated price was attributable to Drew's proposed surcharges for the delivery of their chemical products to the various ports listed in the schedule. Drew asserted that this overstated its evaluated price by \$1,372,707.07, inasmuch as its BAFO surcharges were \$76,337.21.

The agency reevaluated Drew's price proposal, and found that it had unreasonably evaluated it with regard to the surcharges proposed as claimed by Drew. The agency determined that Drew's total evaluated price for the base year and 4 option years was \$2,539,218.09. The agency thus terminated Unitor's contract, and made award to Drew as the low priced, technically acceptable offeror.

²The ports represented by the sub-line items included, for example, Bayonne, New Jersey; Rio de Janeiro, Brazil; Marseilles, France; Yokohama, Japan; and Freemantle, Australia.

The protester argues that the agency's ultimate evaluation of the section of Drew's price proposal pertaining to surcharges, which resulted in the agency's reducing Drew's total evaluated price from \$3,910,578.25 to \$2,539,218.09, was unreasonable, and that the communications regarding the reevaluation of Drew's proposal constituted improper post-BAFO discussions.

Offerors were to provide their proposed "surcharges" for the delivery of their chemical products to the 37 ports listed. There were separate line items for the surcharges for the base year and for each of the 4 option years. To illustrate, CLIN 0021, which pertained to surcharges to be applied during the base year of the contract,³ read, in part, as follows:⁴

0021	Service Port Differential for Chemicals and reagents IAW ⁽⁵⁾ Section C-3.5.	*** _____	Total Estimated Product Quantity, TEPQ Unit of Issue, U/I		
		PERCENT OF TEPQ	EST PROD QTY PER PORT	SURCHARGE PER U/I	SURCHARGE TOTAL PER PORT & U/I
0021AA	Norfolk, VA	15.6%	_____	_____	_____
.					
0021AP	Pearl Harbor, HI	9.1%	_____	_____	_____

The RFP provided instructions on how to complete the "surcharge" CLINs and sub-CLINs. Offerors were first to calculate the TEPQ by determining the total amount of chemicals required to comply with the SOW for that particular year based on the parameters provided in the solicitation. Offerors were also to indicate the particular unit of issue (e.g., pounds, gallons, kilograms, liters, etc.) of the products they would be supplying on the U/I line. Offerors were next to complete each of the sub-CLINs by multiplying their TEPQ by the stated agency estimate of the percentage of the TEPQ which would be required at each particular port (e.g., Norfolk would require 15.6 percent of the TEPQ), in

³CLIN 0021, which included sub-CLINs 0021AA through 0021BK, pertained to the base year; CLIN 0044, which included sub-CLINs 0044AA through 0044BK, pertained to the first option year; CLIN 0066, which included sub-CLINs 0066AA through 0066BK, pertained to the second option year; etc.

⁴As indicated, we have set out only 2 of the 37 sub-CLINs here.

⁵IAW is an acronym for "in accordance with."

order to determine the quantity of product per U/I to be furnished to each port listed. These estimated quantities, entered on the line under the heading "Estimated Product Quantity Per Port," were then to be multiplied by the "Surcharge Per U/I," in order to arrive at the "Surcharge Total Per Port and U/I." The total evaluated surcharge for each CLIN is the sum of surcharge total per port for the 37 sub-CLINs.

Drew, in its BAFO price proposal, left blank the sub-CLINs representing ports located in the continental United States, and completed the sub-CLINs representing overseas ports. In addition, Drew's price proposal contained an unexplained formula-- $235864.06/85014.00 = \$2.77/\text{KG-LTR}$ --at CLIN 0021.⁶ Thus, Drew's price proposal with regard to surcharges read, in part, as follows:⁷

0021 Service Port Differential
for Chemicals and reagents
IAW Section C-3.5. *** 85014 Total Estimated Product
Quantity, TEPQ
KG/LTR Unit of Issue, U/I

$\frac{235864.06}{85014.00} = \$2.77/\text{KG-LTR}$

ZONE NUMBERS AND DESCRIPTION	PERCENT OF TEPQ	EST PROD QTY PER PORT	SURCHARGE PER U/I	SURCHARGE TOTAL PER PORT & U/I
0021AA Norfolk, VA	15.6%	_____	_____	_____
.				
0021AP Pearl Harbor, HI	9.1%	<u>7736</u>	<u>6%</u>	<u>1285.72</u>

MSC states that the contracting specialist assigned to evaluate the offerors' price proposals contacted Drew prior to award in order to clarify the meaning of the computation " $235864.06/85014.00 = \$2.77/\text{KG-LTR}$." The contracting specialist understood Drew's response to be that $\$2.77/\text{KG-LTR}$ "was a 'base surcharge' that was to be applied to each delivery at each of the ports enumerated in [CLIN] 0021 [and] in the case of those posts where a percentage was indicated in item 0021, the surcharge for delivery at such ports was to be the sum of $\$2.77/\text{KG-LTR}$ (the 'base surcharge') and the offered percentage of $\$2.77/\text{KG-LTR}$." The contracting specialist, in evaluating Drew's price, thus determined the surcharges for each of the 37 locations represented by the sub-CLINs in CLIN 0021, by including a "base surcharge" of $\$2.77/\text{KG-LTR}$ in his calculations.

⁶Drew's BAFO proposal contained similar formulas for the option surcharge CLINs.

⁷We have set out for illustrative purposes only 2 of the 37 sub-CLINs here.

For example, even though Drew left blank sub-CLIN 0021AA, on which a surcharge for delivery of chemicals to Norfolk, Virginia, was to be provided, the contracting specialist calculated a surcharge for Norfolk by applying a "base surcharge" of \$2.77/KG-LTR to the quantity of chemicals to be delivered to that port, thus arriving at a total surcharge for the delivery of chemicals to Norfolk of \$37,001.57.

As to the sub-CLINs for which Drew had completed and calculated a surcharge, the contracting specialist calculated a "total" surcharge by applying a "base" surcharge of \$2.77/KG-LTR to the quantities of chemicals estimated by the agency for delivery to those ports, and adding these figures to the surcharges Drew had submitted. For example, with regard to the delivery of chemicals to Pearl Harbor, Hawaii, for which Drew had stated a surcharge of \$1,295.06 in its BAFO, the contracting specialist calculated a "total" surcharge by first applying a "base" surcharge of \$2.77/KG-LTR to the quantity of chemicals estimated for delivery to that port, and then adding this figure of \$21,584.25 to the surcharge Drew had already provided, arriving at a "total" surcharge for delivery of chemicals to Pearl Harbor of \$22,879.30.

Drew's entire BAFO price proposal was evaluated in this manner, with the contracting specialist calculating a total of \$1,449,044.28 for Drew's proposed surcharges and a total evaluated price for the initial 1-year base period and 4 option years of \$3,910,578.25.

After award to Unitor, the agency contacted Drew, the incumbent contractor, concerning the transition from the provision of the services by Drew under the predecessor contract to performance by Unitor. Representatives of Drew met with the contracting officer on July 15 and at that time the agency showed Drew the evaluation of its price proposal. Drew's representatives objected to the agency's evaluation. Drew stated that the \$2.77/KG-LTR figure it had included in its proposal was only the average price per kilogram/liter of the chemicals to be delivered under its offer and explained that it had included this notation in its proposal for informational purposes only. Drew explained that this figure had been used in calculating its surcharges for delivery to those ports for which it had indicated a surcharge would apply. For example, Drew left blank the sub-line item on which the surcharge for delivery of chemicals to Norfolk was to be indicated because Drew would not charge a surcharge for delivery to that port. With regard to those ports for which Drew would charge a surcharge, such as Pearl Harbor, the surcharge was to be the amount it had calculated (using the \$2.77 figure) and had provided in that

sub-line item (\$1,285.72). Drew's proposed surcharges, calculated in this manner, total \$76,337.21.

We find that Drew's BAFO was clear as to price and subject to only one reasonable interpretation and that the MSC contracting specialist's interpretation was irrational. With regard to the $235864.06/85014.00 = \$2.77/\text{KG-LTR}$ computation, it is clear from Drew's price proposal that:
 (1) the 235814.06 figure represents the total cost of the chemicals, etc., that Drew would be delivering worldwide;
 (2) the 85014.00 figure is the TEPQ of these products in the unit of issue of kilograms and/or liters, and the \$2.77 quotient of this division is the average price per kilogram/liter of these chemicals.

It is also clear that this \$2.77 figure is the basis for Drew's calculation of its proposed surcharges for the ports to which it had indicated a surcharge would apply. For example, Drew completed CLIN 0021AP, Pearl Harbor (for which it clearly intended to apply a surcharge) as follows:

	PERCENT OF TEPQ	EST PROD QTY PER PORT	SURCHARGE PER U/I	SURCHARGE TOTAL PER PORT & U/I
0021AP Pearl Harbor, HI	9.1%	<u>7736</u>	<u>6%</u>	<u>1285.72</u>

Drew's estimated product quantity for Pearl Harbor of 7736 (9.1 percent of Drew's 85,014 TEPQ), multiplied by \$2.77 equals \$21,428.72. Six percent of \$21,428.72 is \$1,285.72. Thus, the inclusion of the $235864.06/85014 = \$2.77/\text{KG-LTR}$ computation on Drew's BAFO price proposal was readily determinable from the face of the proposal.

We also note that a comparison of Drew's initial proposal and BAFO reveals a consistent pricing pattern that clearly establishes Drew's intent with regard to the sub-CLINs representing ports such as Norfolk, which Drew left blank. In Drew's initial proposal, it had inserted dashes in the sub-CLINs corresponding to ports for which no surcharges were to apply, indicating Drew's intent not to charge a surcharge for the delivery of chemicals to those ports.⁸ For the sub-CLINs corresponding to these same ports in its revised offer and BAFO, Drew simply left the sub-CLINs

⁸The price proposal Drew submitted with its initial offer also included a computation similar to that which Drew included in its BAFO (i.e., $X \text{ total price} / Y \text{ TEPQ} = Z/\text{KG-LTR}$), and was evaluated by the agency in accordance with the surcharges Drew had indicated, rather than by the contracting specialist's BAFO method of applying a "base surcharge" derived from the computation to all of the sub-CLINs.

blank, which, when considered in conjunction with the manner in which Drew completed its initial proposal, again indicated that Drew did not intend to apply a surcharge to the delivery of chemicals to these ports.⁹ See Energy Container Corp., B-235595.2, Nov. 2, 1989, 89-2 CPD ¶ 414; recon. denied, B-235595.3, Dec. 19, 1989, 90-1 CPD ¶ 5; Stacor Corp., B-231095, July 5, 1988, 88-2 CPD ¶ 9.

Under the circumstances, MSC properly decided to take the corrective action of making award to Drew based on its properly evaluated low BAFO price.

Unitor argues that the communications between Drew's representatives and MSC, which led to MSC's reevaluation of Drew's price proposal, constituted improper post-BAFO discussions. We disagree.

Discussions occur when an offeror is given an opportunity to revise or modify its proposal, or when information requested from and provided by an offeror is essential for determining the acceptability of its proposal. Federal Acquisition Regulation (FAR) § 15.601; Oak Street Distribution Center, Inc., B-243197, July 2, 1991, 91-2 CPD ¶ 14. The conduct of discussions with one offeror generally requires that discussions be conducted with all offerors whose offers are within the competitive range and that the offerors have an opportunity to submit revised offers. Microlog Corp., B-237486, Feb. 26, 1990, 90-1 CPD ¶ 227. Discussions are to be distinguished from clarifications, which are merely inquiries for the purpose of eliminating minor uncertainties or irregularities in a proposal. Id. Clarifications, which are achieved by explanation or substantiation and do not give an offeror an opportunity to revise or modify its proposal, FAR § 15.601, may be requested from just one offeror. RCA Serv. Co., B-219643, Nov. 18, 1985, 85-2 CPD ¶ 563.

Here, neither the initial communication between the MSC contracting specialist and Drew, nor the subsequent communication between the contracting officer and Drew, constituted discussions. Drew was not provided with an opportunity to revise its proposal or submit information necessary to determine the acceptability of its proposal during its communications with either the contracting

⁹Although the RFP's price schedule differed somewhat from initial proposals to BAFOs in that it added more ports, and thus sub-CLINs, to which delivery would have to be made, a line-by-line comparison of Drew's initial proposal and BAFO reveals that for each and every sub-CLIN on which Drew had inserted a dash in its initial proposal, it left the corresponding BAFO sub-CLIN blank.

specialist or the contracting officer. As such, no discussions on this point, post-BAFO or otherwise, took place. See Oak Street Distribution Center, Inc., supra. The communication with the contracting specialist can best be described as an attempted clarification of Drew's otherwise clear BAFO, which obviously resulted in tremendous confusion on the part of MSC. The correction of MSC's misinterpretation of Drew's BAFO pricing also did not constitute discussions since Drew's BAFO, properly evaluated, had only one reasonable interpretation. See Energy Container Corp., supra.

Unitor next argues that MSC evaluated Drew's proposed quantity of its chemical treatment containing hydrazine in a manner inconsistent with the RFP. Unitor asserts that Drew's proposal was based on the assumption that MSC's ships would be under a full load 100 percent of the time for underway steaming, rather than under the assumption specified in the RFP that the ships would be under full load 30 percent of the time and in port or slow steaming 70 percent of the time.¹⁰

As pointed out by the agency, the calculations provided by Drew in its technical proposal are clearly based on the 30 percent full load/70 percent in port or underway steaming assumptions specified by the RFP. MSC found Drew's hydrazine calculations would allow it to meet the SOW requirements.

Other than comparing Unitor's proposed quantity of chemical treatment containing hydrazine to that proposed by Drew, Unitor has failed to provide any probative evidence to substantiate its claim that Drew's proposal was unacceptable or otherwise inconsistent with the RFP. Indeed, according to MSC the quantities of the chemical treatment containing hydrazine proposed by Drew fall within 10 percent of that historically used by MSC.

The protester, in its comments on the agency's supplemental report, filed with our Office on December 13, contends for the first time that Drew's technical proposal may have been noncompliant because Drew allegedly used, in certain of its calculations, improper theoretical parameters concerning the chemical hydrazine in parts per billion. These allegations differ from those raised by Unitor concerning the 30 percent full load/70 percent in port or underway steaming

¹⁰According to Unitor, an assumption that ships will be under a full load 100 percent of the time results in lower calculated dosages than an assumption that ships will be under full load 30 percent of the time and in port or slow steaming 70 percent of the time.

assumptions specified in the RFP. Considered most favorably to the protester, this protest issue is based on information contained in the agency report, which was received by the protester on October 24. In order to be timely under our Bid Protest Regulations, this issue should have been raised within 10 working days of October 24. 4 C.F.R. § 21.2(a)(2) (1991). These supplemental allegations, raised for the first time nearly 8 weeks after their basis was known or should have been known, are thus untimely. Our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. Computer Based Sys., Inc., 70 Comp. Gen. 172 (1991), 91-1 CPD ¶ 14.

Unitor also protests that the chemical treatment for the ships' auxiliary boilers proposed by Drew will not meet the agency's needs. In this regard the RFP required that a "one-step additive package" be provided that will: (1) buffer the condensate (i.e., neutralize the condensation from the boiler steam so that it is not acidic); (2) scavenge the oxygen; and (3) prevent scale formation on steam boilers. Unitor contends that while it is unaware of the chemical content of Drew's proposed product, it does not believe that it will be able to accomplish condensate control in "one-step." Unitor's basis for this contention is apparently that the product offered by Unitor in response to the RFP's "one-step additive package" requirement cannot do so.


This specific issue also was not raised in Unitor's initial protest submission, so it must independently satisfy our timeliness requirements. CH2M Hill Southeast, Inc., B-244707; B-244707.2, Oct. 31, 1991, 91-2 CPD ¶ 413. Considered most favorably to the protester, this argument appears to be based on information contained in Drew's proposal, which was provided to Unitor as part of the original agency report that Unitor received on October 24, 1991. Unitor was therefore required to raise this issue by November 7, 10 working days later. 4 C.F.R. § 21.2(a)(2). Normally, the firm's comments on the report also would have been due on that date. See 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(j)). While the due date for Unitor's comments was extended until November 15, this did not waive our timeliness requirements for filing a protest. Thus, because this issue was not raised until November 15, 15 working days after Unitor knew or should have known of this basis for protest, we view this issue as untimely filed. CH2M Hill Southeast, Inc., supra.

In any event, we find Unitor's protest here, based entirely on speculation, to be without merit. The agency has explained that it has used a one-step additive package in this manner before and has concluded that the one-step additive package proposed by Drew will meet its needs.

Unitor finally contends that the cost evaluation of its proposal was flawed. Specifically, Unitor argues that the agency erroneously increased certain of Unitor's proposed quantities of chemicals and quantities of test kits, thereby increasing Unitor's evaluated price. We need not decide whether the agency's slight upward adjustment of Unitor's quantities and proposed costs was appropriate, since, even assuming that Unitor is correct and that its price proposal should have been evaluated as submitted, its total evaluated price would still be approximately \$300,000 higher than D1cW's.¹¹

The protest is denied in part and dismissed in part.



 James F. Hinchman
General Counsel

¹¹Unitor only alluded to this argument as a footnote in its initial protest, and it was not addressed by MSC in its agency report. Pursuant to our request, MSC submitted a supplemental report addressing (among other things) this Unitor argument in detail. Although Unitor submitted comments on the agency's supplemental report per our request, it chose not to address the agency's explanation of these adjustments to Unitor's proposed pricing.