



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** General Offshore Corporation

**File:** B-249601

**Date:** December 4, 1992

James M. Jacobs for the protester.

Paul Shnitzer, Esq., Crowell & Moring, for MAR, Inc., an interested party.

Peter D. Butt, Jr., Esq., Department of the Navy, for the agency.

Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Although solicitation for support of an ocean construction program did not specifically state that a particular platform that had been part of the program would no longer be included, protester was adequately apprised of the changed program requirements where protester, the incumbent contractor, met with the agency to discuss funding problems for the platform and its likely removal from the program, and received solicitation amendments which sharply reduced the agency's estimated requirements for the program.

2. Where solicitation allowed for payment of 35 percent premium for outstanding (compared to acceptable) proposal, and "limited" premium for a better (compared to acceptable) proposal, agency's decision to pay 12 percent more as limited premium for better proposal was reasonable.

### DECISION

General Offshore Corporation (GOC) protests the award of a contract to MAR, Incorporated under request for proposals (RFP) No. N00600-91-R-2218, issued by the Department of the Navy to support its Ocean Construction Equipment Inventory (OCEI) program. GOC argues that: (1) although the Navy knew that one program element would no longer be included, it failed to amend the solicitation to reflect its changed requirements before making the award; and (2) in any case, the award to MAR was based on an improper evaluation.

We deny the protest.

## BACKGROUND

The solicitation was issued in October 1991 to provide support services for the OCEI, consisting of specialized equipment used primarily in underwater construction activities. The single largest item in the inventory was the Ocean Construction Platform (OCP) SEACON, a 260-foot vessel. As issued, the solicitation provided for a contract to man and operate OCEI equipment, including SEACON, in deployed operations; develop and perform preventive maintenance, including the acquisition of parts; mobilize, man, operate and demobilize SEACON; and design and acquire new OCEI equipment. The RFP provided for the award of an indefinite-quantity, time-and-materials contract, with a 1-year base period and four 1-year option periods. It included estimated requirements for various tasks, for which fixed-price delivery orders would be issued as needed, subject to minimum and maximum amounts. As issued, the RFP obligated the government to 30 percent of the base year amount. The solicitation was sent to 55 potential offerors; only MAR and GOC submitted proposals by the December 9 closing date.

GOC, the incumbent contractor, had been providing OCEI services since 1979; the RFP was issued to provide continued support beyond May 31, 1992, when GOC's contract was scheduled to expire. Although funding for the program--particularly the SEACON component--was uncertain, the OCEI program office, based on historic requirements and projections of future activity, determined that a new contract nevertheless was needed.<sup>1</sup> In January and February, however, the Navy grew increasingly concerned that budgetary constraints might force a reduction in SEACON's operations; as a result of this concern, the Navy and GOC met several times to discuss means of preventing the loss of SEACON.

In late February, the Navy learned that a project expected to account for considerable SEACON usage had been canceled due to funding problems.<sup>2</sup> At the same time, the Navy

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<sup>1</sup>That office was the Chesapeake Division (CHESDIV), Naval Facilities Engineering Command (NAVFAC).

<sup>2</sup>The Navy responded by soliciting work for SEACON from other commands and activities. Two in particular--the David Taylor Model Basin (DTMB) and Submarines Atlantic (SUZLANT)--expressed considerable interest in supporting SEACON. These efforts began in March and continued after the contract had been awarded to MAR on July 21; they resulted in further expressions of interest in SEACON as late as August 19.

completed its evaluation of initial proposals and determined that both MAR and GCC were in the competitive range; before requesting revised proposals, however, the Navy amended the RFP to reflect the reduced level of activity it now expected for SEACON. Specifically, on March 24 the Navy issued amendment 7, which reduced the contract minimum from 30 percent to 5 percent of base year estimated requirements. Revised proposals were submitted on April 8. Prior to requesting best and final offers (BAFOs), the agency again amended the solicitation. Amendment 8, issued on June 1, reiterated that the minimum obligation had been reduced to only 5 percent and warned that, due to uncertainties of mission and budget, previous levels of effort under predecessor contracts should not be taken as a measure of what could be expected from the new contract.

On June 3, the Navy requested that BAFOs be submitted by June 17. On that date, MAR submitted both cost and technical BAFOs; GOC submitted only a cost BAFO, letting stand its April 8 revised technical proposal. MAR's technical proposal was rated "better" and GOC's "acceptable." Although MAR's price was \$18,952,538 and GOC's was \$16,970,817, the Navy determined that MAR's proposal was sufficiently superior technically to warrant the higher price. The Navy then proceeded with the award to MAR on July 21 despite the fact that it apparently learned on July 20 that SEACON would in fact be eliminated from the program.

#### CHANGED REQUIREMENTS

GOC asserts that elimination of SEACON from the program constituted a substantial change in the requirement such that the offerors should have been specifically advised of it and given an opportunity to revise their proposals accordingly.<sup>3</sup> GOC maintains that amendments 7 and 8 were not sufficient to put it on notice of the change, since they did not specifically eliminate SEACON.

Generally, where an agency's requirements change after a solicitation has been issued, it must issue an amendment to notify offerors of the changed requirements and afford them

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<sup>3</sup>GOC cites a Navy memorandum dated July 23 in which CHESDIV noted that SEACON "will be taken out of service on 3 August." The memorandum also refers to a telephone conversation on the same subject that was held on July 20--1 day prior to the award to MAR. The Navy acknowledges that at that time it was making preparations to transfer SEACON, which was ultimately transferred to another activity in September.

the opportunity to respond. See Federal Acquisition Regulation (FAR) § 15.606(a); United Tel. Co. of the Northwest, B-246977, Apr. 20, 1992, 92-1 CPD ¶ 374. One circumstance requiring the issuance of an amendment is a significant change in the government's quantity requirements. See Management Sys. Designers, Inc. et al., B-244383.4 et al., Dec. 6, 1991, 91-2 CPD ¶ 518. The purpose of this requirement, of course, is to assure that offerors have sufficient information to compete intelligently and on an equal basis. Creative Mgmt. Tech., Inc., B-233330, Feb. 28, 1989, 89-1 CPD ¶ 217.

We find that the agency adequately apprised GOC of the changed requirements through its discussions with the firm and amendments 7 and 8. As noted above, the Navy met several times with GOC to discuss SEACON's uncertain outlook. On January 27, the Navy's records indicate, the discussions specifically concerned the effects of ongoing and projected budget cuts and the potential reduction of SEACON activity. GOC itself requested the next meeting, held on January 28, for the specific purpose of giving the Navy the firm's ideas on how to keep SEACON employed and thereby prevent its abolition. (GOC proposed the use of a government-owned, contractor-operated contract for SEACON.) At a January 30 meeting, the Navy's records indicate that GOC expressed concern about the uncertainties regarding program funding. On February 4 and 5, GOC again discussed methods of preserving SEACON; as GOC states, "as the only contractor to have supported . . . SEACON from its inception, GOC participated in various meetings with . . . CHESDIV . . . in an effort to brainstorm ways to utilize the SEACON . . . ." These discussions put GOC on notice that SEACON's continued existence was in jeopardy.

Against this background, amendments 7 and 8 were sufficient, we think, to alert GOC to adjust its proposal based on the possibility that SEACON would be eliminated. Specifically, as noted previously, amendment 7, issued March 24, reduced the contract minimum from 30 percent to 5 percent. Thereafter, by letter of May 1, the Navy advised GOC that the agency's changing priorities made the contract requirements uncertain, and that the Navy was therefore postponing the date set for the submission of BAFOs until June 1; at that time, a decision would be made whether to cancel the solicitation. This letter concluded by warning GOC that its continued participation was "at your own risk."<sup>4</sup> This cautionary note was formalized in amendment 8, issued on June 1, which reminded offerors that, "due to the uncertainties in mission and budget," only

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<sup>4</sup>These statements were made in identical letters sent to GOC and to MAR.

the 5 percent minimum established by amendment 7 could be guaranteed. The amendment further warned that "previous levels of effort on predecessor contracts should not be taken as a measure of what can be expected on this contract." Again, given GOC's knowledge of the SEACON funding problem, this information was sufficient to put the firm on notice that its proposal should take into account the strong possibility (considering all of the discussion of the matter) that SEACON would be eliminated from the requirement.

We conclude that GOC was on sufficient notice of the fate of SEACON for it to compete intelligently; we are not persuaded that the specific knowledge--rather than knowledge of the strong possibility--that SEACON would be eliminated would have had a significant impact on the proposals. We further note in this regard that eliminating SEACON from the requirement did not eliminate all SEACON-related work and costs. In arriving at the 5 percent guaranteed minimum in amendment 7, the record shows, the Navy took into account a minimum level of contract support that would be required for SEACON; even if the vessel were transferred--which seemed likely--it would require such support for an indeterminate time in order to effect the transfer. Consequently, the Navy would not have eliminated SEACON from the RFP entirely under any circumstances, and offerors still would have had to factor SEACON into their offers to some extent.<sup>5</sup>

#### IMPROPER PRICE PREMIUM

GOC argues that the agency had no basis for paying a significantly higher price for MAR's proposal. The RFP provided that the government might elect to pay "a limited price premium" for a proposal categorized as technically better--and a price premium of up to 35 percent for a proposal categorized as technically outstanding (compared to a proposal that was determined to be only acceptable). GOC notes that the Navy rated MAR's proposal only as better, and

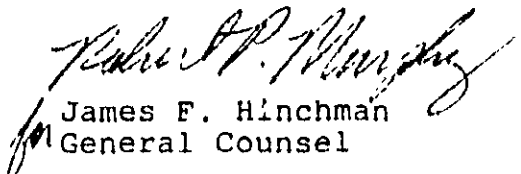
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<sup>5</sup>Subsequent developments bear out the Navy's assessment. When SEACON was ultimately transferred to the Naval Surface Weapons Center (NSWC) in Florida during the period July 23 through September 10, the contractor's efforts involved, among other things, removal of OCEI equipment from SEACON, training of NSWC personnel, and physically moving the vessel from Virginia to Florida. Since GOC's protest caused performance of MAR's contract to be suspended, this work was performed by GOC, whose contract was extended. Regardless of which firm actually performed the work, however, the post-award developments confirm the Navy's assessment that some contract support would be required for SEACON'S transfer.

its own as acceptable; accordingly, the price premium allowable under the solicitation was a limited one. GOC maintains that MAR's 12 percent higher price was not a limited price premium.

This argument is without merit. The only clear guidance in the RFP as to the potential price premium was the statement that up to a 35 percent premium could be paid for an outstanding proposal (compared to an acceptable one). We see nothing unreasonable in the agency's interpretation that, given this starting point, a 12-percent premium--only approximately one-third of the outstanding premium for a rating halfway between the outstanding and acceptable ratings--for a better proposal was permissible. (In fact, since the better rating was midway between the outstanding and acceptable ratings, we think it would be reasonable to interpret the RFP as allowing a premium in the range of 17 or 18 percent.) As GOC does not challenge the technical evaluation conclusions, we have no other basis for questioning the cost/technical tradeoff.

The protest is denied.

  
for James F. Hinchman  
General Counsel