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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Marine Metal, Inc.

File: B-292445.3

Date: December 19, 2003

Manuela Perez for the protester.

Janis P. Rodriguez, Esq., Department of Transportation, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where an invitation for bids for the dismantling of up to four ships does not prohibit “all or none” bids, a bid that expressly states it is a package bid for the complete dismantling of two named ships is an “all or none” bid for those ships and cannot be considered for award of only one of the ships.

DECISION

Marine Metal, Inc. protests the award of a contract to Bay Bridge Enterprises, LLC under invitation for bids (IFB) No. DTMA1B03015, issued by Maritime Administration, Department of Transportation, for dismantling and disposing of four ships located in the James River Reserve Fleet, Virginia.

We deny the protest.

The IFB, issued February 21, 2003, used the two-step sealed bidding process under Federal Acquisition Regulation (FAR) Subpart 14.5. Step one solicited technical proposals to dismantle one or more of the following four ships: the Santa Isabel, the Mormacdawn, the Santa Elena and the Catawba Victory. The offerors who submitted technically acceptable step one proposals would be eligible for the step two sealed bid price competition. Marine Metal, Bay Bridge, ESCO Marine, and two other offerors submitted technically acceptable step one proposals.

On May 27, the agency issued amendment 0002 to the IFB, which solicited the step two sealed bids. The IFB permitted bids on one, all or any combination of ships; however, “a separate bid price must be submitted for each vessel bid.” IFB amend. 2, §§ L-9, L-10.B. The IFB also provided, “A separate bid must be submitted for each

vessel combination offered by any [bidder]," and "the government reserves the right to award any combination of the vessels to one or multiple responsive, responsible [bidders], whose bid offers the lowest overall price." Id. § L-4. Prior to bid opening, the agency advised the bidders:

Note that the Santa Isabel is currently also being considered for award under other contracting options available to the Maritime Administration.

IFB amend. 3.

Bid opening was held on June 10. Marine Metal submitted three bids--one for the Catawba Victory, one for the Santa Isabel, and one for both the Catawba Victory and the Santa Isabel. A cover letter submitted with the latter bid stated the following:

The enclosed package bid is for the complete dismantling of two vessels, the "Santa Isabel" and the "Catawba Victory"

Agency Report, Tab K, Marine Metal Bid, at 1.¹ The other bidders submitted bids with prices for each of the four ships.

ESCO submitted the low bids for both the Catawba Victory and the Santa Isabel. Bay Bridge submitted the second-low bid for the Catawba Victory, and another bidder submitted the second-low bid for the Santa Isabel. Marine Metal's individual bids for the Catawba Victory and the Santa Isabel represented the third-low bids for each of those vessels. However, Marine Metal's package bid for both vessels represented the second-low bid if contracts for both vessels were awarded under the solicitation, and the individual prices for each of these vessels under the package bid was also lower than the second-low individual bids for each of these vessels.

On July 7, the agency awarded a contract to ESCO for dismantling the Catawba Victory and all of the other ships, except for the Santa Isabel. On July 25, the agency awarded a contract for dismantling the Santa Isabel under another solicitation.

On August 7, after ESCO failed to post required bonds, the agency terminated ESCO's contract for the Catawba Victory. The agency subsequently notified Marine Metal that its package bid for both vessels was contingent on the bidder receiving a contract for dismantling both vessels, and that, since the Santa Isabel was removed from the IFB, the package bid could no longer be considered. On August 27, the agency awarded a contract for the Catawba Victory to Bay Bridge, the second lowest bidder for that ship. This protest followed.

¹ Marine Metal did not submit bids on the other two ships.

Marine Metal alleges that, once the Santa Isabel was removed from the IFB, its package bid for the Catawba Victory and the Santa Isabel became a bid for the Catawba Victory alone, and since its bid price for the Catawba Victory under its package bid was lower than Bay Bridge's, it should have received the award for that ship.

Where an IFB does not prohibit bidding on an "all or none" basis, bidders are permitted to qualify their bids on that basis; where a bid is submitted with such a qualification, the bidder does not have the option to decide after bid opening whether it will accept an award for less items than stated in the qualified bid. Pluribus Prods., Inc., B-224435, Nov. 7, 1986, 86-2 CPD ¶ 536 at 3.

In this case, the IFB permitted bids for one, all or any combination of ships, and reserved the right to award any combination of ships to one or more bidders. Thus, all or none bids were permitted. Notwithstanding the protester's allegations, Marine Metal's package bid constituted an all or none bid for dismantling both the Catawba Victory and the Santa Isabel, as clearly stated in the cover letter submitted with that bid, which stated, "The enclosed package bid is for the complete dismantling of two vessels." Therefore, an award can only be based on Marine Metal's package bid if a contract for both ships was awarded to Marine Metal, and once the contract for the Santa Isabel was awarded under another solicitation, an award based on the package bid was no longer possible.

Marine Metal nevertheless references a prospective bidder's question answered by the agency in Amendment 0003, which asked if bids could propose percentage discounts based on the number of ships awarded to a single bidder, to which the agency responded that multiple ship discounts would not be evaluated and that the price bid for each of the four ships must represent the total price for the respective ship. IFB amend. 3, attach. 1, Question 10. Marine Metal states that, in view of the agency's advice that multiple ship discounts were not allowed, this indicated that the agency could choose any part of Marine's Metal's package bid in determining the low bidder for either ship covered by that bid. Contrary to Marine Metal's argument, this response did not preclude all or none bids, which were otherwise allowed by the IFB, but only precluded multiple ships discounts in lieu of specific bid prices for each ship.

The protest is denied.

Anthony H. Gamboa
General Counsel