

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D C 20548**

FILE: B-214136

DATE: July 9, 1984

MATTER OF: UMC Electronics Co.

DIGEST:

1. Protest concerning evaluation provisions of a solicitation must be filed prior to the closing date for receipt of initial proposals.
2. Protest that in evaluating prices agency considered offered prices for first article test data even though that was not an express element of the solicitation's evaluation scheme is denied, since the agency's intent to consider that factor was reasonably reflected in the solicitation provisions.

UMC Electronics Co. protests the award of a contract for electric hydraulic test stands to ACL-Filco Corporation under request for proposals (RFP) No. F41608-83-R-0803 issued by the Department of the Air Force, San Antonio Air Logistics Center, Texas. UMC argues that the Air Force improperly evaluated proposals by failing to consider UMC's low alternate prices for commercially packaged items. UMC also contends that the Air Force did not follow the evaluation criteria set forth in the solicitation for evaluating lowest total price, and alleges that, if it had, UMC would have been awarded the contract. We deny the protest.

The solicitation requested unit prices for the items with standard military packaging ("Offer A") and, as an alternate, unit prices for the items with commercial packaging ("Offer B"). The solicitation stated as follows:

"Offers are not required to be submitted on Offer 'B,' nor is an offeror entitled to receive award on the basis of the lowest unit price submitted for Offer 'B'. Offer 'B' is a deductive alternate offer

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requested solely for the purpose of making a Government determination whether it is advantageous to the Government to award on the basis of Offer 'B.' The Government reserves the right, at its sole option, to make award on the basis of Offer 'B.'"

UMC submitted the lowest Offer B unit prices, based on its own commercial packaging method. ACL did not submit an Offer B. The agency, in accordance with the above provisions, chose not to evaluate Offer B prices.

It is clear that the solicitation left to the agency's discretion the decision whether to make award on the basis of Offer B. Nothing in the solicitation required the agency to evaluate and award on the basis of a low price for commercial packaging. Therefore, we find no merit to the protester's first contention. If UMC thought the agency should be required to award on the basis of commercial packaging prices, it should have protested the solicitation provision prior to the time set for receipt of proposals. See 4 C.F.R. § 21.2(b)(1) (1984); Tempest Technologies, Inc., B-213811, March 13, 1984, 84-1 CPD ¶ 302.

The protester also complains about the Air Force's use of offered prices for first article test data in the price evaluation.

The solicitation contained the following line items in the schedule:

Item No.	Description	QTY/Unit of issue	Prices
0001AA	"First Article Data in accordance with the clause hereof entitled 'First Article Approval-Contractor Testing (1969 Sep),' and Exhibit 'A' attached hereto."	3 CY	"Enter Unit Lot Prices on the Attachment to the Exhibit."
0001AB	"First Article Hardware First Article will be included in the quantity of Order 0001."	2 Ea	Not separately priced.
0001AC	"Estimated Initial Order Quantity"	18 Ea	

While the solicitation requested unit prices for first article test data (item 0001AA), it also provided that the lowest evaluated total price would be determined by following a 5-step formula that did not specifically include first article test data as an evaluation factor: (1) the "initial order quantity" would be multiplied by the offered unit price; (2) the total price for follow-on increments would be calculated; (3) the two totals would be added; (4) transportation costs would be factored in as appropriate; and (5) any special packaging price differentials would be added, and a final evaluated total calculated.

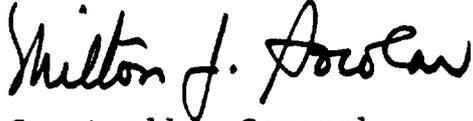
The average unit price received by the Air Force from known test stand suppliers for the first article test data was \$1,440; UMC's price, however, was \$76,647. The agency evaluated proposals based on total evaluated cost, including first article test data. By so doing, the agency evaluated ACL as the low offeror and made award to that firm. Had the Air Force not included first article test data prices, UMC would have been the low offeror.

We agree with the protester that the agency should have specifically included first article test data as an evaluation factor to reflect clearly its intent to evaluate proposals based on total cost, and by separate letter we are advising the Secretary of the Air Force of the matter.

Nevertheless, we think UMC was reasonably on notice that the Air Force would evaluate prices for first article test data. The data was a line item of the schedule, which also included evaluated first article hardware and production quantities. The hardware clearly was going to be ordered, since its price was part of the "Estimated Initial Order Quantity" price, and the data clearly was going to accompany the hardware. Instead of assuming that the government was not going to evaluate a solicited price for an item it obviously intended to pay for if a first article were required, we believe UMC should have assumed either that the data would be evaluated in the five-step process as part of the "initial order quantity," since that is when it would be ordered, or would be considered in determining the lowest offer to the government, which clearly was to be the basis for award. Certainly, it was not at all reasonable for UMC to structure its proposal as it did, by offering an exorbitant price (approximately 53 times the average price from the five known suppliers) for the data on the apparent assumption that it could win the competition without that price being evaluated, and receive a windfall once the data was ordered as expected.

In short, even though the Air Force did not clearly state in its solicitation that offered prices for first article test data would be evaluated, UMC's assumption that the agency would disregard them even though low cost to the government clearly was intended as the basis for award was, under the circumstances, unreasonable. The record shows that no offeror qualified for first article waiver, so that selection of the lowest-priced offer including consideration of first article data costs thus resulted in an award that was based, in fact, on the most advantageous offer meeting the government's minimum needs.

The protest is denied.

for 
Comptroller General
of the United States