

**DECISION**

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

Ashen  
PL-I  
31187

**FILE:** B-216172

**DATE:** May 13, 1985

**MATTER OF:** Gichner Mobile Systems

**DIGEST:**

1. Solicitation provision that bids would be evaluated by adding the total price for the option items to the total price offered did not require that only a single, aggregate award be made. GAO has previously found that such a provision merely advises bidders that both the base and the option quantities would be considered in evaluating bids. Moreover, the solicitation, read as a whole, clearly advised offerors that the agency reserved the right to make multiple awards on a lot-by-lot or item-by-item basis.
2. Bid for base and option quantities is not considered unbalanced, and thus subject to rejection as being nonresponsive, where the protester fails to show that it is materially unbalanced, in that the option quantities were not reasonably expected to be exercised or that there was such extreme front-loading that the risk of an inordinately high cost to the government and windfall to the bidder from failure fully to exercise the options overshadowed the agency's intention fully to exercise the options.

Gichner Mobile Systems (Gichner) protests the award of a contract to Brunswick Corporation (Brunswick) for Lot I under invitation for bids No. M00027-84-B-0014, issued by the United States Marine Corps (Marine Corps) for shelters. The Marine Corps evaluated bids on a lot-by-lot basis and made award to Brunswick for Lot I and to Gichner for Lot II. Gichner, the low overall bidder if bids were evaluated on an aggregate basis, contends that the solicitation required evaluation only on an aggregate basis.

We deny the protest.

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Thirty-five items were included under the solicitation, as set forth below:

## Items

|           |  |
|-----------|--|
| 0001      | 459 General Purpose Shelters                                 |
| 0030      | Option for 459 Additional General Purpose Shelters           |
| 0002      | 355 Knockdown Shelters                                       |
| 0031      | Option for 355 Additional Knockdown Shelters                 |
| 0006      | 60 Complexing Kits   |
| 0035      | Option for 60 Additional Complexing Kits                     |
| 0007-0014 | Technical Data in Support of Items Nos. 0001, 0002, and 0006 |
| 0003      | 34 20-Foot Electromagnetic Interference Shelters             |
| 0032      | 34 Additional 20-Foot Electromagnetic Interference Shelters  |
| 0004      | 112 10-Foot Electromagnetic Interference Shelters            |
| 0033      | 112 Additional 10-Foot Electromagnetic Interference Shelters |
| 0005      | 60 Joining Corridors   |
| 0034      | 60 Additional Joining Corridors                              |
| 0015-0022 | Technical Data in Support of items Nos. 0003, 0004, and 0005 |
| 0023      | Monthly Production Progress Reports                          |
| 0024-0029 | Reserved for Future Procurement.                             |

The Marine Corps advised bidders that offers would be "evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards)." In addition, clause L9, "AWARDS BY LOT OR ITEM," provided that:

"Award will generally be made to a single offeror on each entire lot. However, the Government reserves the right to award by item when the Contracting Officer determines that it is advantageous to the Government. (See paragraph 10 of the Solicitation Instructions and Conditions SF 33A.)

|      |                   |     |
|------|-------------------|-----|
| 0001 | General Purpose   | Lot |
| 0002 | Knockdown         |     |
| 0006 | Complexing Kit    |     |
| 0003 | 10-ft EMI         | Lot |
| 0004 | 20-ft EMI         |     |
| 0005 | Joining Corridor" |     |

The solicitation provided for the evaluation of options, indicating that:

"Offerors are required to Price Option Items 0030 through 0035. Offers will be evaluated for purposes of award by adding the total price for Option Items 0030 through 0035 to the total price offered. Evaluation of option will not obligate the Government to exercise the options."

While the solicitation reserved to the government the right to require delivery of option units in any quantity not exceeding the total option quantities set forth in the solicitation, it also permitted bidders to offer varying prices for different option quantities depending on the quantity ordered and the dates when ordered. By amendment No. 5, the Marine Corps informed bidders that it would calculate the evaluated bid prices by considering the prices indicated in the bid pricing schedules, that is, the price for the total option quantities rather than the varying prices for lesser option quantities.

For purpose of evaluation, the Marine Corps divided the bid items into two lots. Lot I consisted of base quantity items Nos. 0001, 0002 and 0006, the corresponding option quantity items Nos. 0030, 0031 and 0035, the supporting technical data items Nos. 0007-0014, and, apparently, a requirement for monthly production progress reports (as set forth in item No. 23). Lot II consisted of base quantity items Nos. 0003, 0004 and 0005, the corresponding option quantity items Nos. 0032, 0033 and 0034, the supporting technical data items Nos. 0015-0022,

and, apparently, a requirement for monthly production progress reports (as set forth in item No. 23). -

The Marine Corps reports that Gichner and Brunswick submitted the apparent low responsive bids, with Gichner bidding \$37,717,209 for Lot I and \$7,901,649 for Lot II and Brunswick bidding \$37,214,610 for Lot I and \$10,764,760 for Lot II. Although the \$45,618,858 total of Gichner's bid for both lots was lower than the \$49,979,370 total of Brunswick's bid for both lots, the Marine Corps found that the lowest cost to the government would result from an award of Lot I to Brunswick and Lot II to Gichner for a total cost of \$45,116,259. Accordingly, the Marine Corps awarded Lot I to Brunswick and Lot II to Gichner. In anticipation of the award to Brunswick, Gichner had meanwhile filed this protest with our Office.

Gichner objects to the Marine Corps' evaluation of bids on a lot-by-lot basis. It interprets the language in the solicitation that "[o]ffers will be evaluated for purposes of award by adding the total price for Option Items 0030 through 0035 to the total price offered" as requiring that bids be evaluated by adding the bid price for the option items to the bid price for all the other items, both those allotted by the Marine Corps to Lot I and those allotted to Lot II, in order to make a single, aggregate award. Gichner further maintains that even if we were to find that the solicitation could be interpreted as not requiring one aggregate award, this would at most create an ambiguity which Gichner believes should be interpreted against the Marine Corps as the drafter of the solicitation.

We initially observe that the protester in Granite State Machine Co., Inc., B-199644, Nov. 26, 1980, 80-2 C.P.D. ¶ 396, cited similar language in a solicitation, language providing that bids would be evaluated by adding the total price for all option quantities to the total price for the basic quantity, and contended that the emphasis on total price indicated that only a single, aggregate award would be made. We rejected that interpretation, finding that the clause did not limit the right of an agency to make aggregate or multiple awards, but instead merely advised bidders that both the base and the option quantities would be considered in evaluating bids. Granite State Machine Co., Inc., B-199644, supra, 80-2 C.P.D. ¶ 396 at 3.

Moreover, whatever the interpretation given to the clause cited by Gichner when considered apart from the remainder of the solicitation, the solicitation must be read as a whole in a reasonable manner. See Byrd Tractor, Inc., B-212449 Dec. 13, 1983, 83-2 C.P.D. ¶ 677. Here, not only did clause L9 of the solicitation indicate that the Marine Corps contemplated making award on a lot-by-lot basis, but, in addition, that clause reserved to the Marine Corps the right to make an award on an item-by-item basis. Further, the solicitation included standard form 33A, clause 10 of which provided that "[t]he Government may accept any item or group of items of any offer, unless the offeror qualifies his offer by specific limitations." Bidders were also notified that offers would be evaluated on the basis of the "advantages or disadvantages to the Government that might result from making more than one award (multiple awards)" and that the Marine Corps in fact anticipated awarding "firm fixed price contracts" (emphasis added).

Accordingly, we find that the solicitation did not clearly require the Marine Corps to make a single, aggregate award, see SKS Group, Ltd., B-205871, June 14, 1982, 82-1 C.P.D. ¶ 574 (agency free to consider multiple awards where the solicitation did not clearly require a single, aggregate award), but instead clearly reserved to the agency the right to make multiple awards.

Gichner observes that should the Marine Corps order one less than the maximum option quantity under each of items Nos. 0030, 0031 and 0035, then award to Brunswick for Lot I would no longer result in the lowest cost to the government. In particular, while the cost to the government of making award to Gichner for the full Lot I option quantity totaled \$37,717,209, or 1.35 percent more than the \$37,214,610 total cost of such an award to Brunswick, the cost of award to Gichner for one less than the full option quantity would total only \$37,668,748, or 1.98 percent less than the \$38,431,355 cost of such an award to Brunswick. This potential for displacement resulted from Gichner having offered one unit price for any option quantity, with the option unit price less than the base unit price, while Brunswick offered varying unit prices depending upon the option quantity ordered, with the unit price for lesser option quantities more than the base unit price. Thus, while Gichner offered to supply the base quantity of 459 general purpose shelters for \$22,289 per unit and any option quantities for \$21,917 per shelter, Brunswick offered to supply the base quantity for \$23,612

per shelter, up to 50 optional shelters for \$26,027 per unit, a total of 51 to 100 optional shelters for \$25,027 per unit, total of 101 to 250 optional shelters for \$23,027 per unit, a total of 251 to 458 optional shelters for \$21,527 per unit, and 459 optional shelters for \$20,027 per unit.

We understand Gichner to be suggesting that Brunswick's bid might be unbalanced.

Our Office has recognized that unbalanced bidding entails two aspects. The first is a mathematical evaluation of the bid to determine whether each bid item carries its share of the cost of the work plus profit, or whether the bid is based on nominal prices for some work and enhanced prices for other work. The second aspect--material unbalancing--involves an assessment of the cost impact of a mathematically unbalanced bid. A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the government. Consequently, a materially unbalanced bid may not be accepted. See Applicators, Inc., B-215035, June 21, 1984, 84-1 C.P.D. ¶ 656.

We can find no explanation in the record before us as to why Brunswick's unit price for the initial option quantities should substantially exceed its unit price for the base quantities and as to why its unit price for the total option quantities should be up to \$1,500 less for Lot I than its unit price for one less than the total option quantities. We note in this regard that the solicitation provided for the government to exercise the options within 6 months after first article approval. Since the solicitation required final deliveries of the base quantities for items Nos. 0001-0006 to be made no sooner than 300 days, and as late as 1,020 days, after first article approval, the government decision to exercise the option presumably would come while the production lines were still open. Moreover, the solicitation also provided that delivery of the option quantities would continue at the same rate as delivery of the base quantities.

However, even assuming that the bid was mathematically unbalanced, there must also be a showing that it was materially unbalanced. See Ace Van & Storage Company, B-213915, July 16, 1984, 84-2 C.P.D. ¶ 47; ABC Siding & Remodeling, B-213390, July 10, 1984, 84-2 C.P.D. ¶ 32.

Gichner has not shown that award to Brunswick for Lot I will not result in the lowest ultimate cost to the government. Gichner has not alleged, and nothing in the record indicates, that the Marine Corps will not order the full option quantity upon which the determination of the lowest cost was based. On the contrary, we have been informed by the Marine Corps that it has identified a requirement for the procurement of over 2,000 shelters of the types in question here, has the funds fully to exercise the options, has no other contracts for the acquisition of such shelters, and, accordingly, intends fully to exercise the options. Moreover, this is not one of those cases where the front-loading is so extreme that we have recognized that the possibility of intervening events causing the contract not to run its full term, thus resulting in an inordinately high cost to the government and windfall to the bidder, creates a reasonable doubt as to whether a mathematically unbalanced bid would ultimately provide the lowest cost to the government despite the current intention of the agency to exercise the options. See Applicators, Inc., B-215035, supra, 84-1 C.P.D. ¶ 656 at 10.

Accordingly, Gichner has failed to carry its burden of demonstrating that Brunswick's bid should have been rejected as nonresponsive because unbalanced.

The protest is denied.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel