



The Comptroller General
of the United States

Washington, D.C. 20548

135239

Decision

Matter of: Tek-Lite, Inc.
File: B-230298
Date: March 8, 1988

DIGEST

1. Addition of royalty fee evaluation factor to bids is not improper merely because it is not included under Federal Acquisition Regulation § 14.201-8, which lists only certain price-related factors that may be applicable, since this listing is not by its terms exclusive of other price-related factors which may be reasonable to evaluate when in the best interest of the government.
2. Addition of evaluation factor to bids for items manufactured under a value engineering change proposal (VECP) to reflect royalty fee government must pay for VECP items is unobjectionable, since the evaluation factor represents an actual cost to the government of contracting for a VECP item.

DECISION

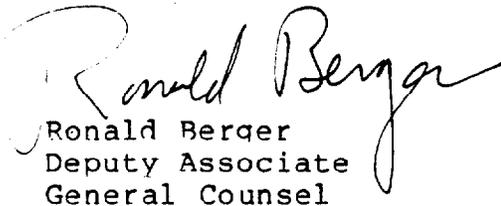
Tek-Lite, Inc. protests a solicitation clause providing for addition of an evaluation factor to bids under invitation for bids (IFB) No. DLA400-88-B-1652, issued by the Defense Logistics Agency for ground obstruction marker lights. We dismiss the protest.

The solicitation allows bids on lights of either a basic design or a design based on a value engineering change proposal (VECP). For each VECP unit purchased, the government must pay a royalty fee of \$5.71 to the developer. Clause M24 of the solicitation thus provides for the addition of a \$5.71 evaluation factor to prices of bidders offering the VECP design. Tek-Lite asserts that the proposed addition of the royalty fee as an evaluation factor does not comply with Federal Acquisition Regulation (FAR) § 14.201-8, which, Tek-Lite claims, sets forth the only price-related evaluation factors allowable. Since a factor based on a VECP royalty is not specifically listed, Tek-Lite contends that the application of such a factor is not permissible and clause M24 therefore should be removed from the solicitation.

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Contrary to Tek-Lite's characterization, FAR § 14.201-8 merely sets out five price-related factors that "may be applicable in evaluation of bids for award and shall be included in the solicitation when applicable." Despite Tek-Lite's attempt to read more into the provision, the cited language nowhere suggests that the listed factors were meant to be exclusive, that is, that the provision was intended to preclude the use of other relevant price-related factors, including VECP royalty fees, in evaluating bids. See, e.g., FAR § 45.201, providing for use of a "rental equivalent" evaluation factor when government-owned property is to be used by some offerors, and Crown Laundry and Cleaners, Inc., 64 Comp. Gen. 179 (1985), 85-1 ¶ 21, involving the Army's use of a bid evaluation factor to measure the cost to the government of providing government facilities to a contractor. Indeed, since the royalty fee evaluation factor allows consideration of what the actual cost to the government would be if a bid based on the VECP alternate were accepted, we think the use of such an evaluation factor is appropriate. See generally Tek-Lite, Inc., B-227843.2, Oct. 2, 1987, 87-2 CPD ¶ 324; see also Renders Shipbuilding & Repair Co., Inc.--Reconsideration, B-225578.2, July 1, 1987, 87-2 CPD ¶ 1.

The protest is dismissed.


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