



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Capital Engineering & Mfg. Co.

File: B-232144.3; B-232144.4

Date: April 21, 1989

DIGEST

1. An award of less than all line items in solicitation is not improper where an earlier protest delayed award process beyond end of fiscal year and available funds for certain items expired, preventing award on those items, and, where, in any event, solicitation provides that the government may accept any item or group of items of a bid.

2. Protest contending that agency should have rejected low bid because bidder failed to furnish complete information for evaluation of f.o.b. origin transportation costs is denied where record indicates agency had sufficient information available to evaluate transportation costs for the bidder and where bid is low even under least favorable method of shipping.

DECISION

Capital Engineering & Mfg. Co. protests the award of a contract to Arkansas Precision Hydraulics, Inc., under invitation for bids (IFB) No. DAAE07-88-B-A310, issued by the Army for launcher kits and components. Capital contends that Arkansas failed to submit complete transportation information which rendered its bid nonresponsive. Capital also challenges the Army's award of a contract for less than all of the line items listed in the IFB.

We deny the protest.

The IFB solicited, f.o.b. origin, various quantities of launcher kits by contract line item number (CLIN). The IFB basically called for award to the lowest evaluated cost, that is, price bid and transportation costs. The IFB required bidders to submit shipping weights and dimensions and other shipping information including the number of units to be shipped per vehicle. The government reserved the right to make an award on any item or group of items for a quantity less than the quantity offered and further warned

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that CLINs 1AA, 2AA, 3AA, 4AA and 5AA were not currently funded.

Nine bids were received in response to the IFB at bid opening on August 5, 1988. The apparent low bidder was found to be nonresponsible and its bid was rejected. Capital subsequently became the apparent low bidder. Arkansas submitted the next low bid. Award was delayed beyond the end of the fiscal year because of a pending protest that had been filed with our Office on August 1 by another bidder under the solicitation. Consequently, certain appropriated funds earmarked for part of this procurement were withdrawn on September 23 because, the Army reports, the funds would not be available for obligation after September 30. Withdrawal of these funds left unfunded CLINs 1AA, 3AA, 4AA and 5AA.

The bids were then evaluated for those CLINs for which funds were available (e.g., CLINs 1AD, 3AB, 6AA and 7AA).^{1/} The agency evaluation, which included transportation costs for the remaining quantity of items, found Arkansas in line for award as the low bidder at \$5,999,672.76, while Capital's bid was evaluated at \$6,025,248.90. Arkansas was subsequently awarded a contract. The Army reports that, in the best interests of the government, it has not suspended performance of Arkansas' contract.

Capital protests the Army's withdrawal of the funds, alleging that the contracting officer deliberately withheld the funding to avoid making an award to Capital. We find no merit to Capital's allegation. The funds that had been designated for CLINs 1AA, 3AA, 4AA and 5AA were from a fiscal year 1986 appropriation, and were available for obligation only until September 30, 1988. Because the Army could not award a contract under this IFB by that date, the funds could not be obligated for this procurement. Accordingly, it is clear that the funds were withdrawn simply because they could not be utilized in this procurement, rather than because of bias against the protester.

To the extent Capital is challenging the Army's decision not to allocate other funds to permit award of all CLINs, this involves the Army's judgment concerning which projects and activities should receive increased or reduced funding and is not a matter for our review. See Tektronix, Inc., B-219981.4, June 12, 1986, 86-1 CPD ¶ 545.

^{1/} The Army reports that prices for CLIN 2AA were not included in the evaluation since it was a foreign military sale which had not been funded.

We further note that the IFB notified bidders that any award on these particular line items would be subject to the availability of funds and that, in any event, the government had the right to accept any single item or any group of items of a bid. Thus, Capital was on notice that award could be made for less than all items.

Capital also contends that Arkansas' bid should have been rejected because it did not furnish the shipping data required under section K-25 of the IFB. That provision states that,

"[s]ince F.O.B. origin shipment can be made utilizing a variety of modes and types of sizes of common carrier's equipment, OFFERORS MUST SUBMIT, as part of all offers on an F.O.B. origin basis, the following transportation characteristics . . . (4) maximum number of contract units that will be loaded on each type and size of carrier's equipment. . . ."

Capital asserts that Arkansas' failure to provide this data rendered its bid nonresponsive because the Army could not properly evaluate Arkansas' bid.

In our view, the missing transportation information was not critical to the agency's evaluation of the bid since the agency could determine the transportation costs from the information furnished and, in any event, Arkansas' bid is low under the least favorable interpretation of the shipping information. In this regard, the IFB recognized that a bidder's failure to furnish dimensions and shipping weight would not render the bid nonresponsive if the contracting officer found, as here, that the lack of such data clearly would not affect the standing of the bidder.

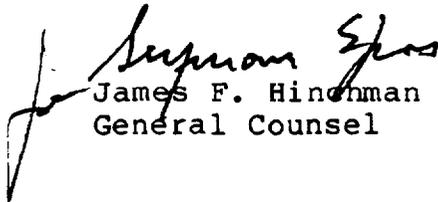
Specifically, the record shows that the Army had initially evaluated Arkansas' bid at three units per truckload, which the agency determined to be the most reasonable capacity per vehicle based upon the weight, measurements, and freight classification information supplied by Arkansas in its bid.^{2/} Capital's bid provided for, and was evaluated at,

^{2/} In order to determine which bid represented the lowest cost to the government, the Army transportation specialist added to each bid the government's estimated transportation costs from the bidder's plant using established freight rate schedules furnished by the Military Traffic Management Command.

two units per truckload. Capital essentially contends that Arkansas' bid did not expressly commit to shipping three units per truckload and that the awardee's bid, therefore, is ambiguous. The protester asserts that since certain advantages may exist for a contractor to make available for shipment only one unit per truckload under an f.o.b. origin contract (e.g., elimination of packaging and warehousing congestion), the ambiguity in Arkansas' bid should be evaluated under the least favorable interpretation of the transportation characteristics (i.e., one unit per truckload).

The Army's transportation specialist reports, however, that even under Capital's "worst case" analysis of Arkansas' bid evaluated at one unit per truckload, Capital still does not displace Arkansas as the low bidder.^{3/} Thus, although Arkansas failed to state the number of units to be shipped per truckload, we cannot conclude that the protester was prejudiced in any way by this omission or the Army's evaluation of the bids. The record shows that the awardee's bid provided sufficient pertinent transportation data to be applied to the government's established freight rate schedules and that Arkansas' bid was lower than the protester's bid under any reasonable interpretation. See Sony Corp. of America, B-225512.2, Mar. 20, 1987, 87-1 CPD ¶ 320. In these circumstances, we find that the protester has failed to show that the Army's evaluation was unreasonable or that the award to Arkansas was improper.

The protest is denied.


James F. Hinchman
General Counsel

^{3/} Capital disputes that Arkansas' bid remains low under the "worst case" analysis, but has failed to establish that the transportation specialist's cost analysis is incorrect. Capital, after reviewing the transportation worksheets, merely states that the evaluated costs are close.