



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Automaker, Inc.  
**File:** B-236601  
**Date:** December 20, 1989

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### DIGEST

1. Price evaluation was not improper where the solicitation included two conflicting clauses concerning the evaluation of options, but the awardee was the low offeror under either clause.
2. An offer is not materially unbalanced where the offeror's cost structure is consistent with a design approach permitted under the solicitation, and the offer represents the lowest cost to the government.
3. New and independent grounds of protest filed more than 10 working days after notification of the bases of protest are dismissed as untimely.

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### DECISION

Automaker, Inc., protests the award of a contract to Engineering, Inc., under request for proposals (RFP) No. F09650-89-R-0102 issued by the Warner Robins Air Logistics Center (WR-ALC), Robins Air Force Base, Georgia, for a robotic paint booth, referred to as a Small Aircraft Finish Application Robotic Installation (SAFARI), to prepare and paint the F-15 aircraft. Automaker contends that the awardee submitted an unbalanced offer, that solicitation evaluation factors were not properly applied, and that Automaker was not permitted to correct an error in its price.

We dismiss the protest in part and deny it in part.

The solicitation called for the installation of a stand-alone paint booth as a basic requirement, with options consisting of: (1) an advanced heating, ventilation, air-conditioning (HVAC) system (2) an air-filtration system (3) a chemical mixing and dispensing system, and

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(4) a robotic system. There were a number of different line items under the basic requirement and under each of the options. The solicitation advised that only proposals which included the booth and all options would be considered, and indicated that the government reserved the right to exercise the options at a later date, separate from the booth.

Award was to be made to the lowest priced, technically acceptable offeror. However, the solicitation included both the clause at Federal Acquisition Regulation (FAR) § 52.217-4 (FAC 84-37), entitled Evaluation of Options Exercised at Time of Contract Award, and the clause at FAR § 52.217-5(a) (FAC 84-37), entitled Evaluation of Options. Under FAR § 52.217-4, evaluation is based on the total price for the basic requirement together with any option(s) exercised at the time of award, while FAR § 52.217-5 provides for evaluation based on adding the total price for all options to the total price for the basic requirement.

Thirty-eight prospective contractors were solicited and two proposals were received. Discussions were conducted with both offerors and, after discrepancies in the proposals were resolved, best and final offers (BAFOs) were received on July 19. Award was made to Engineering, Inc., on July 31, for the basic requirement and option 1, the HVAC system. A notice of award was sent to Automaker the same day indicating that award was made to Engineering, Inc., at a price of \$2,301,575, for specific line items<sup>1/</sup>, and that award was based on evaluation of the basic requirement and all options. Automaker protested to our Office alleging that because only one of four options was exercised at the time of award, the evaluation should have been based on only the basic requirement and the option awarded, and not on the basic requirement and all options. Automaker also asserted that for the listed line items under the basic requirement and the one option actually awarded it offered a price of \$2,291,000, which is lower than Engineering's price.

The agency report established that Automaker's offer was actually the higher of the two, based on either total price or on the line items actually awarded. Automaker's allegation that it was the low offeror for the basic requirement and the exercised option was based on the line items as listed in the initial notice letter sent to Automaker. The notice, however, although correctly stating

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<sup>1/</sup> The notice indicated that award was for line items: 0001AA, 0001AB, 0001AC, 0002, 0002AA, 0002AB, 0002AC, 0002AD, 0002AE, 0002AF, 0002AG, 0002AH, 1001, 1001AA, 1002, 1002AA, 1002AB, 1002AC, 1002AD, and 1002AE.

Engineering's price for the line items actually awarded, incorrectly omitted line item 0001AD from the list of line items awarded. When Automaker's offer of \$11,400 for item 0001AD is added to the price of the other line items listed, its price for the awarded items is \$2,302,400, versus Engineering's lower price of \$2,301,575. A correction notice indicating that item 0001AD should have been listed was sent to Automaker on August 21. Engineering's total price for all line items, if all options are exercised, is \$4,934,215, and Automaker's price is \$4,952,206. Since Engineering is the low offeror under either award clause, Automaker was not prejudiced by the price evaluation, and we find no reason to disturb the award on this basis. See Browning-Ferris Indus. of the South Atlantic, Inc.; Reliable Trash Serv. Co. of Md., Inc., B-217073; B-218131, Apr. 9, 1985, 85-1 CPD ¶ 406.

After receiving the agency report, Automaker first alleged that Engineering's offer was unbalanced for options 1 and 2, and protested that the agency had improperly denied Automaker's request for correction of its price for line item 0001AB. In subsequent comments, Automaker also protested the agency's failure to award line item 1001AB, training for the HVAC system. Our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues; where a protester later supplements a timely protest with new and independent grounds of protest, the later raised allegations must independently satisfy the timeliness requirements of our Regulations, here, the requirement that protests be filed no later than 10 working days after the protest basis was or should have been known. 4 C.F.R. § 21.2(a)(2) (1989); Tri-States Serv., B-232322, Nov. 3, 1988, 88-2 CPD ¶ 436.

An oral notification of the protest basis is sufficient to start the 10-day period running. Garden State Brickface & Stucco Co., B-237153, Oct. 31, 1989, 89-2 CPD ¶ \_\_\_\_\_. The agency verbally notified Automaker on July 20 that it would not allow Automaker's requested correction of line item 0001AB, and Automaker was required to protest this determination within 10 days thereafter. Similarly, the award notice and the correction notice listed all line items awarded, making it clear that HVAC system training was not awarded. Automaker should have protested this issue within 10 days of receiving the notice. Since Automaker's protest on these two issues was not received in our Office within 10 days after Automaker knew its bases for protest, these protest issues are untimely and will not be considered.

We will consider Automaker's allegation of unbalancing since it was filed within 10 days of Automaker's receipt of the

agency report, which contained the pricing information that formed this basis of protest. Although the concept of unbalancing generally applies to sealed bidding, it also may apply to negotiated procurements where, as here, cost or price constitutes the primary basis for source selection. tg Bauer Assocs. Inc., B-228485, Dec. 22, 1987, 87-2 CPD ¶ 618. An offer is materially unbalanced if it is based on nominal prices for some of the work and enhanced prices for other work and there is reasonable doubt that an award based on the offer will result in the lowest cost to the government. Semcor, Inc., B-227050, Aug. 20, 1987, 87-2 CPD ¶ 185. However, here, there is nothing in the record which suggests that award to Engineering will not result in the lowest cost to the government.

Automaker argues that Engineering's offer is unbalanced for options 1 and 2. Option 1 is for the HVAC system for the entire 10,000 square foot building. An HVAC system for a smaller 200 square foot control area is required under the basic requirement. In its offer, Engineering indicated that the option 1 HVAC system was included in its price for the basic requirement. Engineering also stated that its price for the basic requirement would be reduced by \$56,250 if option 1 were exercised at the time of award. Automaker separately priced option 1 at \$306,000. Engineering priced option 2, the enhanced air filtration system, at \$554,545. Automaker's price for option 2 was \$96,000. Automaker argues that, under the basic requirement, all air in the SAFARI is to be filtered. Option 2 simply requires that the system catch smaller particles and, because the blowers, ducts and filter housings are already in place, Automaker contends that option 2 requires only the addition of filters for which Engineering's price is alleged to be excessive.

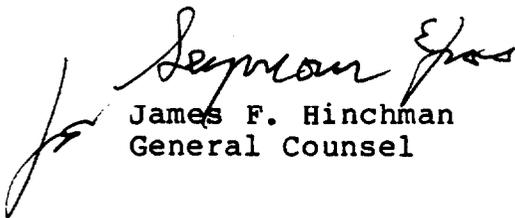
The two offerors proposed significantly different approaches and systems and the Air Force states that Engineering's offer does not contain enhanced or nominal prices when assessed in conjunction with its technical proposal. With respect to option 1, offerors are required to provide a certain type of fan and connections for the ventilation system to satisfy the basic requirement. Engineering proposed to supply the full HVAC system under the basic requirement, and because it is cost effective to install the basic equipment and the option HVAC equipment simultaneously, Engineering proposed a reduction in price if option 1 were exercised as part of the initial award. According to the agency, this reduction in price is realistic in relation to Engineering's design proposal.

As to option 2, Automaker's approach to upgrading the air filtration system was to simply add filters. Engineering, however, proposed a different but technically acceptable approach of adding a different system to handle volatile organic compounds. The addition of this system surpasses the solicitation requirements and the system would be able to meet stricter environmental control requirements, which may become necessary at a future date. The agency indicates that this proposal was fully technically acceptable and that Engineering's price was consistent with the more complex system.

In essence, Engineering's pricing simply reflects a difference in technical approach under a solicitation which stated the government's minimum requirements but which also encouraged innovative designs, and allowed latitude in the manner in which offerors could satisfy the minimum requirements. Since Engineering's proposal was technically acceptable and its pricing was consistent with its particular proposal design features, the agency properly determined that the offer was not materially unbalanced. See B.F. Goodrich, B-235953; B-235953.2, Oct. 31, 1989, 89-2 CPD ¶ 403.

We also note that Automaker asserts that it is not clear which options will eventually be exercised, and, therefore, which offer will actually be low. The Air Force states that it expects that all options will be exercised. Since Engineering's price is clearly low based on either the option actually exercised and awarded, or on the total of all the options, we have no basis to conclude that Engineering's price does not represent the low cost to the government. To the extent that Automaker is protesting the option pricing and award evaluation format under the RFP, it is protesting an alleged apparent solicitation impropriety and is untimely because the protest was not filed until after the submission of proposals. 4 C.F.R. § 21.2(a)(1).

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel