

Van Schaik



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Kalyln Incorporated

File: B-237909

Date: March 26, 1990

Robert B. Coward, for the protester.
Craig Hodge, Esq., Office of Command Counsel, United States Army Materiel Command, for the agency.
John W. Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that transportation dimensions for F.O.B. origin items included in bid for trailers indicate that bid is nonresponsive is denied where the bid offered to provide the trailers as specified in the solicitation and it contains no qualifications.
2. Protest that successful bidder received an unfair price advantage by providing inaccurate dimensions in transportation data clause for F.O.B. origin items is denied since bidders are permitted to use shipping weights and dimensions in bid which are less than actual shipping weights and dimensions as an alternative to reducing the price of the item bid on.

DECISION

Kalyln Incorporated protests the award of a contract to Miller Trailers, Inc. under invitation for bids (IFB) No. DAAE07-89-B-J066, issued by the Army for trailers. Kalyln argues that Miller's bid included incorrect shipping information which rendered the bid nonresponsive and resulted in an improper evaluation of transportation costs.

We deny the protest.

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The IFB solicited bids for 118 trailers and included options for 118 more. The solicitation indicated that bids on the basic quantity were to include both F.O.B. origin and F.O.B. destination prices for some of the trailers, only F.O.B. origin prices for others and both F.O.B. origin and F.O.B. destination prices on all the option quantities. The IFB included a clause entitled, "Transportation Data for F.O.B. Origin Offers," which required bids to include dimensions, weights and other "transportation characteristics" to be used to evaluate the government's transportation costs for F.O.B. origin items. That clause further informed bidders that if the shipping weights or dimensions of equipment delivered under the contract exceed those set forth in the awardee's bid:

"[t]he contract price shall be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on the offeror's dimensions and weight per unit and the transportation costs that should have been used for bid (or proposal) evaluation purposes based on correct shipping data."

Award was to be made on an all or none basis and on the delivery terms which the contracting officer determined to be most advantageous to the government.

The Army received eight bids. Based on the prices submitted, without consideration of the government's transportation costs, Kalyn was the low bidder at \$2,417,851, while Miller bid \$2,450,815. After the Army evaluated the transportation information in the bids and included the government's transportation costs on F.O.B. origin items, Miller's evaluated price was \$2,640,864 and Kalyn's was \$2,680,074. The Army explains that because the trailer heights Kalyn provided in its transportation data clause were greater than Miller's, the government's transportation costs for F.O.B. origin items, and consequently, Kalyn's evaluated price, were greater than Miller's. The Army awarded the contract to Miller as the low bidder.

Kalyn argues that the trailer heights included in Miller's transportation data clause--58 inches for most of the trailers--were inaccurate, while its own bid included correct heights--100 to 118 inches. The solicitation required the trailers to have platforms not more than 58 inches high and include bulkheads. According to the protester, during shipment some of the trailers will carry other trailers as cargo and federal safety standards require the bulkheads to be mounted upright on those trailers.

Thus, according to Kalyn, since a bulkhead must be mounted upright on some of Miller's trailers when they are shipped, the additional height of a bulkhead should have been included in Miller's bid and the 58-inch heights in Miller's transportation data clause were too low, rendering the bid nonresponsive.

We do not agree. The purpose of the transportation data clause is to enable the government to ascertain its total cost for a proposed contract and to establish the basis for a contract price reduction in the event the shipping weights or dimensions in the bid, and therefore, the government's actual transportation costs for F.O.B. origin items are exceeded. Canadian Commercial Corp., B-236850, Jan. 2, 1990, 90-1 CPD ¶ 3. We have recognized that bidders may understate the shipping dimensions as an alternative to reducing the price for the item itself. Capital Indus., Inc., B-190818, July 7, 1978, 78-2 CPD ¶ 17. Similarly, we have noted that bidders may overstate shipping dimensions to eliminate the obligation to pay excess transportation costs in case the item delivered for shipment exceeds the stated dimensions. Silent Hoist & Crane Co., B-210667, Dec. 23, 1983, 84-1 CPD ¶ 16. While bidders may understate or overstate the dimensions inserted in the clause they must take care not to create doubt as to their intent to supply an item that complies with the specification requirements. Id. Miller has specified in the clause that the trailers will be 58 inches high, thus there is no question here that the trailers comply with the height requirement contained in the specifications. Since understated shipping dimensions alone will not render a bid nonresponsive, even if the trailers needed to be higher for shipping purposes, we think the agency acted properly in accepting Miller's bid. Id.

Kalyn states that Miller received an unfair price advantage by understating its trailer heights in the transportation data clause. This argument is based on its view that the contract "does not provide for any recovery for differences in the way the bid was evaluated vs. the way the government requires shipments to actually be made." On the contrary, the contract allows a price reduction equal to the difference between the evaluated transportation costs and transportation costs based on "correct shipping data," or actual shipping dimensions and weight. To the extent that the actual shipping dimensions exceed those in Miller's contract, resulting in a shipping cost higher than that calculated by the Army based on Miller's bid, the additional cost will be deducted from the amount paid to Miller under the contract. Thus, the transportation data clause of the contract will compensate the government for any costs it

incurs because of any misstatement of the actual shipping dimensions in the awardee's bid and therefore will assure that the government receives the benefit of the awardee's low bid.

Kalyn also appears to argue that the transportation information in Miller's bid will dictate the method used to ship the trailers and thus Miller's understated heights indicated that the trailers will not be shipped in accordance with federal safety standards concerning the use of upright bulkheads. Under the clause at Federal Acquisition Regulation § 52.247-29, which was referenced in the solicitation, on F.O.B. origin items, Miller's responsibility for the trailers extends to preparing them for shipment in accordance with the terms of the contract and making them available for shipping by the F.O.B. origin shipping contractor chosen by the government. Since the items are to be shipped F.O.B. origin, beyond preparing the trailers and making them available for shipping in accordance with its contract, it is not Miller's responsibility, but that of the government's F.O.B. origin shipping contractor, to assure that federal shipping standards are met.

Finally, in a submission filed with this Office on February 20, 1990, Kalyn argued for the first time, that loading charges in Miller's bid were not taken into account in the bid evaluation process. According to Kalyn, the contract award price will be increased to cover these charges, which indicates that the trailers will not be shipped in the manner in which Miller's bid was evaluated. To the extent that this is separate argument, it is untimely since it is based on information in the Army's report on the protest, which Kalyn received on January 9. Our Bid Protest Regulations require that protests based on other than alleged solicitation defects must be filed not later than 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1989). Here, Kalyn waited 6 weeks after it received the Army's report on the protest which contained the evaluation documents before it raised the matter of Miller's loading charges.

Moreover, although Kalyn complains that the Army's handling of Miller's loading charges indicates that the trailers will not be shipped in the manner in which the bid was evaluated,

as we explained, Miller's bid does not control the manner in which the trailers actually will be shipped; they will be shipped by the government's designated shipping firm in accordance with applicable federal safety standards.

The protest is denied.

for Robert P. Murphy
James F. Hinchman
General Counsel