



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Eastern Trans-Waste of Maryland, Inc.--  
Reconsideration

**File:** B-250143.2

**Date:** February 23, 1993

Peter Paul Mitrano, Esq., for the protester,  
Lester Edelman, Esq., Department of the Army, for the  
agency.  
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

Protest that awardee's bid which contained entry of "n/c" for one line item should have been rejected as nonresponsive was properly dismissed as the bid reflects the bidder's intent to provide the item at no cost to the government; the "n/c" entry does not cause the government to lose the protection of the solicitation's liquidated damages clause as the clause simultaneously provides for a deduction under another line item which was priced by the awardee, and under which the awardee may incur substantial damages.

### DECISION

Eastern Trans-Waste of Maryland, Inc. requests reconsideration of our September 22, 1992, dismissal of its protest against the award of a contract to Browning-Ferris Inc. under invitation for bids (IFB) No. DACA31-92-B-0085, issued by the Department of the Army for refuse collection and disposal at Cameron Station in Alexandria, Virginia.

We affirm the dismissal.

The solicitation, issued on July 8, 1992, contained a bid schedule for the base year and 2 option years. The bid schedules for each year were similarly structured, each containing categories for collecting and removing refuse, painting refuse containers, and steam cleaning and chemically treating refuse containers. For the base year, bidders were to insert their price for furnishing a dumpster and collecting and removing refuse for the base year in line item No. 0001. Line item No. 0002 called for a price for

painting the refuse containers once a year. Line item No. 0003 called for a price for steam cleaning and chemically treating the refuse containers. The solicitation contained a liquidated damages clause, which provides that failure to paint the containers once a year would result in a deduction of 100 percent of the line item price for painting for that period, and a deduction of 10 percent of the line item price for refuse collection for that month. Similarly, the solicitation stated that failure to steam clean and chemically treat containers as required would result in a deduction of 100 percent of the line item price for steam cleaning for the period and 10 percent of the line item price for refuse collection for that month.

Browning's low bid included an entry of "n/c" (no charge) for the line items concerning the painting of the refuse containers, and the steam cleaning and chemical treatment of the refuse containers. The agency awarded the contract to Browning, whereupon Eastern protested to our Office that Browning's bid of "n/c" for the two line items rendered its bid nonresponsive.

We dismissed the protest because it did not establish a basis for challenging the agency's action. We pointed out that Browning's bid was responsive because an "n/c" notation clearly equates with zero dollars and represents the bidder's affirmative intent to obligate itself to meet a particular IFB requirement at no cost to the government. Keahey's Moving Co., B-224273, Nov. 24, 1986, 86-2 CPD ¶ 602.

In its reconsideration request, Eastern argues that we failed to address its argument that Browning's bid should have been considered nonresponsive because the "n/c" entry for two line items "negates" the intended effect of the liquidated damages clause in the event that Browning did not satisfactorily perform either the painting of the refuse cans or the steam cleaning and chemical treatment of the refuse cans.

As we stated previously, Browning's bid is responsive because it obligates Browning to meet the IFB requirements on the line items on which it bid "n/c" at no cost to the government. Browning did not take exception to the liquidated damages clause. Thus, while Browning's poor performance of line item Nos. 0002 or 0003 could not result in a deduction of the line item price for painting or steam cleaning because of Browning's "n/c" bid for those line items, Browning is still subject to a deduction of 10 percent of the line item price for refuse collection for 1 month's work. Under Browning's bid, unacceptable performance for line item Nos. 0002 or 0003 would result in a deduction of \$1,703.51, which is 10 percent of its price

for 1 month's refuse collection. This amount is greater than the government estimate and Eastern's price for either line item. Accordingly, the government remains protected against Browning's poor performance of these line items.

Recognizing that Browning's bid does, in fact, subject Browning to these liquidated damages, Eastern argued that the provision for a 10-percent deduction of the price for refuse collection constitutes a penalty, and thus may be unenforceable. As a result, Eastern suggests that the government could be left with no enforceable liquidated damages protection because of Browning's "n/c" entries. While Eastern casts this argument in terms of the effect of Browning's "n/c" entry, in fact, it constitutes nothing more than a protest that one portion of the liquidated damages clause may be unenforceable. Under our Bid Protest Regulations, a protest based upon an alleged impropriety apparent on the face of the solicitation must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1992). Since Eastern first objected to the liquidated damages clause after the contract was awarded, this allegation is untimely and will not be considered.

The dismissal is affirmed.



Ronald Berger  
Associate General Counsel