28297

DECISION **THE COMPTROLLER GENERAL OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-212994 **DATE:** May 22, 1984

MATTER OF: Volvo of America

DIGEST:

1. A grantee agency may reject a bid where the sources of the life cycle cost estimates contained in the bid are not substantiated.

2. An allegation that an awardee unreasonably understated certain costs in its offer is without merit where award was not based on cost and, even if the costs were understated, there is no evidence that the awardee's bid would have been more costly than the complainant's.

Volvo of America complains concerning the award of a contract for 12 articulated buses, spare parts, and accessories to M.A.N. Truck and Bus Corporation by the Metropolitan Bus Authority (MBA) of Hato Rey, Puerto Rico. MBA is the recipient of federal grant funds from the Urban Mass Transportation Administration (UMTA), Department of Transportation (DOT). Volvo contends that MBA improperly rejected its bid as nonresponsive and failed to evaluate life cycle and standardization costs as required by law and the solicitation.

We deny the complaint.

The solicitation stated that award would be made to the responsible bidder whose offer was most advantageous, based on, in addition to price, the evaluation of performance and standardization data, and life cycle costs. It also mandated that bidders furnish all data necessary to substantiate their offers.

At bid opening, Volvo and M.A.N. were the only two bidders. Volvo's price was $3,290,496 while M.A.N.'s was $3,185,154. Thereafter, MBA technical officials met with representatives of both firms to discuss their offers, having previously requested from Volvo certain

028898

parts lists, maintenance frequency factors and any other supplemental data concerning the firm's life cycle cost estimates contained in its bid. Upon the recommendation of technical officials, MBA subsequently awarded the contract to M.A.N.

Volvo, upon protesting the award to MBA, was informed that its bid had been rejected as nonresponsive because Volvo had failed to substantiate adequately its life cycle cost estimates. Volvo thereafter filed a protest with UMTA, which denied the protest. Volvo then filed a complaint with this Office.

The purpose of our review in grant complaints such as this is to ensure that grantor agencies require their grantees, in awarding contracts, to comply with applicable law, regulations, or terms of grant agreements.[1] See Copeland Systems, Inc., 55 Comp. Gen. 390 (1975), 75-2 CPD 237. At a minimum, grantees must assure that each contract award results from maximum practicable competition. See Attachment "O" to Office of Management and Budget Circular A-102 (January 1981). In determining compliance with that requirement, we apply the fundamental principles of federal procurement inherent in the concept of competition.

Volvo challenges the award to M.A.N. on the following grounds:

1. MBA improperly failed to consider life cycle costs in awarding the contract, and now attempts to "cover up" that failure by asserting that it rejected Volvo's bid because the bid was nonresponsive.

2. M.A.N.'s standardization costs were inadequately documented, and thus M.A.N. should have been penalized under the terms of the solicitation.

---

[1] We consider Volvo's complaint pursuant to our public notice entitled "Review of Complaints Concerning Contracts Under Federal Grants," 40 Fed. Reg. 42406, September 12, 1975.

We will consider each of these issues separately.

1. The Responsiveness of Volvo's Bid

Volvo first contends that, contrary to law and the terms of the solicitation, MBA improperly failed to consider life cycle costs in awarding the contract. In this regard, Volvo points to a preaward memorandum from MBA technical officials stating that, since M.A.N.'s life cycle cost estimates were based on actual experience while Volvo's were based on predictions and engineering projections, the estimates should not be evaluated and award should be made on the basis of price. Volvo believes that MBA is now attempting, in the face of Volvo's complaint, to "get around" the fact that it did not consider life cycle costs by asserting that Volvo's bid was nonresponsive. Volvo argues that its bid was responsive and that, had life cycle costs been taken into account, the bid would have been less costly than M.A.N.'s over the life of the buses.

MBA asserts that Volvo's bid was rejected as nonresponsive by the board of awards because the bid failed to "include all information" concerning performance and standardization data requested by the solicitation.[2] In addition, MBA states that Volvo did not adequately support certain of its life cycle cost estimates with parts lists and verifiable frequency data. On behalf of MBA, UMTA argues that rejection of Volvo's bid as nonresponsive was reasonable since Volvo omitted from its bid material information required by the specifications to be submitted by the date of bid opening.

---

[2]The solicitation requested documents substantiating the following performance criteria: compliance with specifications; availability of service and engineering support; ability to provide training; availability of parts; maintenance and operation; and certification of vehicle life. In addition, the solicitation requested standardization documentation, including costs (costs, for the most part, to be directly incurred by MBA), for the following: spare parts; modifications to existing MBA maintenance facilities; special tools; mechanic and driver training; and approved deviations from MBA technical specifications.

At the outset, we note that there is no support in the record for Volvo's allegation that MBA's position is a post-award "cover up" of the fact that MBA did not consider life cycle costs in awarding the contract. The memorandum to which Volvo refers was only a recommendation from technical officials to the board of awards and thus did not constitute the final basis for award. In addition, the post-award documents submitted by MBA to justify its decision, including a later memorandum from technical officials, uniformly state that Volvo's bid was rejected because it was considered nonresponsive. Since there is no evidence to support Volvo's allegation, we conclude that it has no legal merit.

The central question here is whether MBA had proper grounds to reject Volvo's bid. We note, in this regard, that there was no provision in the solicitation that required performance and standardization data and supporting data for life cycle cost estimates to be submitted by bid opening. It is also unclear from the record exactly what data Volvo failed to submit with its bid. Nonetheless, in our view the propriety of MBA's actions depends on whether Volvo adequately substantiated its life cycle cost estimates. We conclude from the record that Volvo did not.

The solicitation proposed an expected vehicle life of 500,000 miles and required life cycle cost estimates for certain items. Bidders were supplied with a schedule that listed oil and gas usage, and various maintenance procedures, upon which they were to set forth for each item, where applicable, figures showing the cost of parts and material, the number of labor hours required, the frequency of the procedure, and the total estimated cost. The solicitation also provided that those figures had to be substantiated and that the failure to do so might result in rejection of the estimates. Volvo's and M.A.N.'s cost estimates per bus were as follows:

	Volvo	M.A.N.
Fuel Economy	3.44 mpg at $1.093 per gallon = $158,865.00	3.3 mpg at $1.093 per gallon = $165,606.06
Oil Consumption	4,300 mpg at $3.93 per gallon = $455.86	784 mpg at $3.93 per gallon = $2,506.38
Brake Relining	$1,661.06	$4,771.46
Transmission Overhaul	$7,903.02	$9,423.08
Engine Overhaul	$3,982.16	$5,177.46
Air Condition-ing Overhaul	$706.26	$2,247.90
Rebuild Alter-nator	$119.00	$1,379.02
Rebuild Starter	$125.40	$652.00
Preventive Maintenance	$11,882.89	$24,322.00
Total Per Bus	$185,700.65	$216,085.36

Volvo's lower estimated costs generally resulted from the firm's projections of substantially lower parts costs and labor hours.

To justify its costs, Volvo generally represented that they were based on experience. Other than asserting that it delivered 2,600 units worldwide per year, however, Volvo did not verify the basis of its assertion by supplying the number of buses in its sample and the number of miles they had traveled. For example, Volvo sought to substantiate its oil usage figures of 4,300 miles per gallon by merely claiming that it was "based on available data" obtained from 1982 revenue service with non-air conditioned buses from three transit authorities.

The record also shows that Volvo believed that its frequency figures for maintenance procedures were adequately supported solely by the firm's assurances that the figures had a basis in the technology. While Volvo did, in most instances, submit parts lists documenting its parts cost figures, Volvo's bid on several occasions contained different prices for the same part. For example, Volvo, in documenting its life cycle estimates, stated that front and back brake relining kits cost $50.00 and $53.00 respectively; the standardization costs listed for those kits, on the other hand, were $60.14 and $65.83. In addition, Volvo submitted a list showing that the specific parts needed for rebuilding the alternator and the starter cost $98.01 and $164.36. However, the cost for parts shown on Volvo's life cycle cost schedule sheet was $79.46 for each procedure. Finally, Volvo gave no source for its labor hours.

In comparison, M.A.N.'s bid stated that its costs were either based on experience, or, where its buses had not yet accumulated 500,000 miles service in the United States, on the component manufacturer's recommendation. Where its costs were based on experience, M.A.N. substantiated that fact. For instance, M.A.N. buttressed its fuel and oil usage figures by submitting actual mileage figures for nearly 120 buses, some air conditioned, and with specific fuel use projections obtained from the air conditioning manufacturer, which was the same manufacturer used by Volvo. In fact, the actual mileage figures M.A.N. submitted generally exceeded its projected mileage. M.A.N. also gave a source for each of its labor figures. Finally, M.A.N. submitted detailed parts lists and maintenance charts.

The record shows that MBA afforded Volvo ample opportunity to document its estimates, in that MBA both requested in writing certain data and met with Volvo to discuss its bid. While Volvo contends that its bid was the least costly in view of its life cycle cost estimates, we believe that Volvo's bid left those estimates in substantial doubt. Therefore, we believe that MBA, unable to effectively evaluate Volvo's bid, properly rejected it.

Volvo asserts that it was unfair to a new manufacturer like Volvo for MBA to rely heavily in evaluating life cycle costs upon actual field experience. As we noted above, however, we believe that Volvo's estimates were inadequate because the firm failed to document any basis for its estimates, which in any event Volvo stated in its bid were based on experience. We find no merit, therefore, to this assertion.

Volvo also asserts that MBA, rather than reject the firm's bid if it believed Volvo's estimates were inadequately supported, should have evaluated estimates according to section 1.1.18(3) of the solicitation. That section stated:

> "Where one or more bidder(s) provide(s) adequate support for a cost factor, but one or more bidder(s) provide(s) inadequate support for the same factor, the inadequately supported estimate(s) will be evaluated on a base line equal to the greatest negative estimates for the cost factor, or at zero if no negative estimates were submitted."

The record shows that MBA did not evaluate Volvo's estimates under this provision. In addition, it is unclear from the solicitation, which did not provide any negative estimates, how the provision was to be applied. If we adopt Volvo's interpretation of that provision, however, Volvo's inadequately-supported life cycle costs would be assigned M.A.N.'s higher costs as the "greatest negative estimate," and M.A.N.'s offer would be the the least costly, considering life cycle costs, as well as the lowest priced. In any event, the intent of the provision was clearly to render a bidder's inadequately-supported life cycle cost estimates less favorable than the adequately-supported estimates of another bidder. There is no evidence, therefore, that Volvo was prejudiced by MBA's failure to evaluate its bid according to section 1.1.18(3).

Finally, Volvo argues that, had it known life cycle costs would not be considered, it would have lowered its price. This argument is not supported by any evidence and obviously is self-serving; moreover, Volvo's bid was rejected not because of its price, but because its life cycle cost estimates were not supported. Thus, we fail to see the relevance of Volvo's argument in any event.

In short, we conclude that, MBA properly rejected Volvo's bid.

2. <u>M.A.N. Standardization Costs</u>

Volvo argues that M.A.N.'s bid was not the most economical because MBA incorrectly evaluated M.A.N.'s standardization costs. Volvo alleges that M.A.N.

unrealistically claimed no standardization costs for maintenance facilities modifications, and mechanic and driver training. The firm contends therefore that M.A.N.'s costs were inadequate and that they should have been readjusted under section 1.1.18(3) of the solicitation, cited above.

We note, however, that Volvo's argument is not relevant here since award was not based on a cost comparison of the two bids but rather on the fact that M.A.N. submitted the only acceptable bid. In any event, the record shows that, contrary to Volvo's allegation, M.A.N. did not claim zero standardization costs for mechanic and driver training. The solicitation established the hourly costs for both types of training and only required bidders to set forth the number of hours of training necessary. M.A.N. complied with the solicitation by setting forth these hours.

In addition, while it may have been unreasonable for M.A.N. to claim no costs for facilities modifications necessary to accommodate its articulated bus, we point out that, even if we assume that Volvo's projected facilities standardization costs of $50,250 were accurate for any articulated bus, M.A.N.'s bid, which was approximately $100,000 lower than Volvo's, would still have been less costly than Volvo's.[3] Thus, we find no merit to this portion of Volvo's complaint.

The complaint is denied.

for Milton J. Socolar
Comptroller General
of the United States

[3]While Volvo contends that the $50,250 figure it set forth as a standardization cost should have been added to M.A.N.'s bid under the provisions of section 1.1.18(3) of the solicitation, we note that the procedure set forth in that section was applicable only to life cycle cost estimates.