

DECISION

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

FILE: B-186954

DATE: November 15, 1976

MATTER OF: General Fire Extinguisher Corporation

DIGEST:

1. Protest on grounds that contracting officer incorrectly evaluated protester's shipping weight is denied since IFB provided that transportation costs would be added to FOB origin bids in determining low bidder and contracting officer used information furnished by protester in guaranteed maximum shipping weight clause to evaluate transportation costs.
2. Allegation that low bidder furnished unrealistically low maximum guaranteed shipping does not provide basis for disturbing award since low bidder was not required to list actual weight of its product. Furthermore, GAO has recognized that a bidder may guarantee weight which is less than actual weight rather than reduce price for item itself.
3. Contention that successful bidder is incapable of manufacturing an acceptable product raises issue of propriety of contracting officer's affirmative determination of that firm's responsibility, which determinations are no longer reviewed by our Office except in circumstances not present here.
4. Allegation that prior inspections of competitor's product were deficient pertain to matter of contract administration rather than legality of award process and are not for consideration by our Office.

General Fire Extinguisher Corporation, (General) has protested the award of a contract to Metalcraft, Inc., (Metalcraft) under invitation for bids (IFB) No. DSA700-76-B-1359 issued by the Defense Supply Agency (DSA), Defense Contract Supply Center (DCSC), Columbus, Ohio.

B-185954

The subject IFB sought bids on 1,870 fire extinguishers, referenced in the solicitation as contract line item (CLIN) 0001. CLIN 0002 of the IFB, pertaining to first article testing and approval of the product sought, was subsequently waived by DCSC. Amendment No. 0001 added to the IFB CLIN's 0003 and 0004 which sought bids, respectively, on 21,320 and 16,476 additional fire extinguishers.

The solicitation provided that one award, on either an FOB origin or FOB destination basis, would be made and, accordingly, bidders were requested to submit offers for each CLIN on both bases. Bidders were also informed that CLINs 0001 and 0004 were for shipment to Memphis, Tennessee, while CLIN 0003 was for shipment to Columbus, Ohio. Pursuant to Armed Services Procurement Regulation (ASPR) § 7-2003.16 (1975 ed.), which was referenced in the subject IFB, bidders were further advised that FOB origin bids would be evaluated " * * * by adding to the FOB origin price all transportation costs to said destination. * * *"

Bids were received from three bidders. Metalcraft's FOB origin unit price bid on CLIN 0001 of \$17.95 was still determined to be the lowest submission following deduction of a 1/8 percent prompt payment discount and addition of transportation costs which raised Metalcraft's FOB origin unit price bid to \$18.228. However, General, the apparent low bidder on CLINs 0003 and 0004 with FOB origin unit price bids of \$17.89, was displaced by Metalcraft based on the following evaluation:

<u>METALCRAFT</u>	<u>CLIN 0003</u>	<u>CLIN 0004</u>
F.O.B. Origin	\$17.95	\$17.95
Less: 1/8% cash discount	<u>.0224</u>	<u>.0224</u>
	\$17.9276	\$17.9276
Freight	<u>.077</u>	<u>.1430</u>
Total Delivered Price	\$18.0046	\$18.0706
 <u>METALCRAFT</u>	 <u>CLIN 0003</u>	 <u>CLIN 0004</u>
F.O.B. Destination	\$18.29	\$18.29
Less: 1/8% cash discount	<u>.0229</u>	<u>.0229</u>
Total Delivered Price	\$18.2671	\$18.2671

E-186954

GENERAL

F.O.B. Origin	\$17.89	\$17.89
Freight	.134	.196
Total Delivered Price	<u>\$18.024</u>	<u>\$18.086</u>
F.O.B. Destination	<u>\$18.09</u>	<u>\$18.09</u>

Thereafter, the contracting officer made award to Metalcraft of CLINs 0001, 0003 and 0004.

General argues, with respect to CLINs 0003 and 0004, that it was prejudiced by an erroneous evaluation of transportation costs. General states that the actual weight of its product was less than that used by the evaluators and that the actual weight of Metalcraft's product was greater than that used in the evaluation. In addition, General contends that the Government failed to consider freight rates available to General from a contract carrier which were more favorable than those of a regulated common carrier. General concludes that an evaluation based upon the actual weights of the items involved and the actual freight rates available to General would have resulted in a determination that General's bid on CLINs 0003 and 0004 represented the least cost to the Government.

Clause B05 of the IFB, entitled "Guaranteed Maximum Shipping Weights and Dimensions", provided spaces in which the Government could enter its estimate of the shipping weights and dimensions of the items being procured. In this instance, the Government estimated the shipping weight of each fire extinguisher to be 10 pounds when one extinguisher was packed per container. Each bidder was to insert in clause B05 its guaranteed shipping data, including the maximum shipping weight per container, number of units per container, the type of container, its size and shipping character. Metalcraft guaranteed in its bid that a carton packed with 12 individually-packaged extinguishers would weigh no more than 95 pounds, or 7.92 pounds per unit. General's guaranteed maximum shipping weight of 10 pounds per unit was the same as the Government estimate.

In evaluating the cost of transportation, the Government used the guaranteed maximum shipping weights of 7.92 and 10 pounds submitted by Metalcraft and General, respectively. General states that this results in a distorted view of the transportation costs to be paid by the Government, since the actual shipping weight of each extinguisher is 8.8 to 9 pounds. Therefore, General asserts, Metalcraft's actual shipping weight is more than the 7.92 pounds guaranteed in that firm's bid and

conversely, General's actual shipping weight is less than the 10 pounds guaranteed in its bid. General's protest shows that it regarded the Government's estimate of 10 pounds shown in the IFB as establishing a maximum figure over which no bidder could go. In entering "10 pounds" in its own bid, General states that it was simply agreeing to meet the Government's requirements: it still expected its bid to be evaluated on the basis of the actual shipping weight of its product, which was less than 10 pounds per unit. Had this been done, General asserts, its bid for CLINs 0003 and 0004 would have been shown to have been most advantageous to the Government.

We believe General's protest largely results from a misunderstanding of the role played by the "Guaranteed Maximum Shipping Weights and Dimensions" clause in the evaluation of bids. The clause clearly contemplates that the weight entered by each bidder in its bid would be the basis upon which transportation costs would be evaluated.

ASPR § 2-201(a)(D)(1) (1975 ed.) requires that the exact basis upon which bids will be evaluated and award made be stated in the solicitation. In this regard we note that Clause B05 of the solicitation, citing ASPR § 7-2003.16 (1975 ed.) notified all bidders that FOB origin bids would be evaluated in accordance with the guaranteed maximum shipping weights and dimensions furnished by the bidder. Specifically, ASPR § 7-2003.16 (1975 ed.), in part, advised bidders that:

"The guaranteed maximum shipping weights and dimensions of the supplies are required for determination of transportation costs. The bidder (or offeror) is requested to state as part of his offer the weights and dimensions. If separate containers are to be banded and/or skidded into a single shipping unit, details must be described. If delivered supplies exceed the guaranteed maximum shipping weights or dimensions, the contract price shall be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on bidder's (or offeror's) guaranteed maximum shipping weights or dimensions and the transportation costs that should have been used for bid (or proposal) evaluation purposes based on correct shipping data. * * *

* * * * *

"* * * * If the bidder (or offeror) fails to state the guaranteed maximum shipping weight and dimensions for his supplies as requested, the Government will use the estimated weights and dimensions below for evaluation. * * *"
(Emphasis added)

Our Office has emphasized that the purpose of the guaranteed maximum shipping weight clause is twofold: (1) to enable the Government to accurately ascertain its total costs for a proposed contract; and (2) to establish the basis for a contract price reduction in the event the maximum guaranteed shipping weight is exceeded. Moreover, we have recognized that "In order to meet competition a bidder may guarantee a weight which is less than the actual rather than reduce the price for the item itself". 38 Comp. Gen. 819, 921 (1959). See also 49 Comp. Gen. 558 (1970); W.A. Apple Manufacturing, Inc., B-183791, September 23, 1975, 75-2 CPD 170.

As we have indicated, General apparently misinterpreted the purpose of the guaranteed maximum shipping weight clause and guaranteed a weight in excess of the actual per unit weight of its product. Nevertheless since General inserted a maximum shipping weight of 10 pounds per unit based on one unit per container, the contracting officer, in accordance with ASPR § 7-2003.16 (1975 ed.), properly evaluated General's bid on that basis. That ASPR provision, which is quoted above, specifically states that guaranteed maximum shipping weights "are required for determination of transportation costs."

We do not agree that Metalcraft should be disqualified from award of the subject contract for filing a "false weight." Since, as already indicated, our Office has recognized that shipping weights guaranteed by bidders are no more than estimates, see W.A. Apple Manufacturing, Inc., supra, Metalcraft was not required to list the actual weight of its product. Accordingly, Metalcraft's bid was responsive to the IFB.

Next, General has indicated that the contracting officer should have evaluated General's FOB origin unit price bid by applying the freight rates used by Rayco, General's present carrier, under a prior contract with DCSC. In this regard General asserts that the contracting officer knew of these rates but chose to ignore them in evaluating the FOB origin bid by General on CLINs 0003 and 0004.

Clause 10 of the IFB, referencing ASPR § 7-2003.23(d) (1975 ed.) advised bidders that:

"Land methods of transportation by regulated common carrier are normal means of transportation used by the Government for shipment within the United States (excluding Alaska and Hawaii). Accordingly, for the purpose of evaluating bids (or proposals), only such methods will be considered in establishing the cost of transportation between bidder's (or offeror's) shipping point and destination (tentative or firm, whichever is applicable), in the United States (excluding Alaska and Hawaii). Such transportation cost will be added to the bid (or proposal) price in determining the overall cost of the supplies to the Government. When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to utilize any other means of transportation or any other destination at the time of shipment." (Emphasis added)

DCSC has reported to our Office that the freight rates used in evaluating bids under the subject IFB were furnished from the Eastern Area Military Traffic Management Command (EAMTC). Our Office has held that a contracting officer, acting in good faith, has a right to rely on a transportation evaluation prepared by transportation experts. 46 Comp. Gen. 123, 132, 133 (1966); 52 Comp. Gen. 352, 356 (1972). Accordingly we find no legal basis to question the freight rates used by DCSC in evaluating General's bid.

General also contends that Metalcraft is not capable at present of manufacturing the fire extinguisher called for under the subject IFB. General states that fire extinguishers purchased from Metalcraft have failed often and that in view thereof Metalcraft should be disqualified from any further contracts until it submits a product meeting all applicable specifications. Furthermore, General asserts that Metalcraft has received preferential treatment from DCSC insofar as the inspection of its products are concerned and that in view thereof our Office should investigate to determine whether the inspection procedures at Metalcraft are adequate and in accordance with regulations.

The contention that Metalcraft is not capable at present of manufacturing the extinguisher required under the subject IFB raises the issue of Metalcraft's responsibility. Our Office has discontinued its review of protests involving affirmative determinations of responsibility unless fraud is alleged on the part

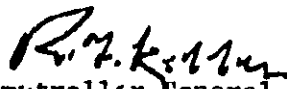
B-186954

of the procuring officials or the solicitation contained definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365 affirmed 54 Comp. Gen. 715 (1975, 75-1 CPD 138).

The question of the adequacy of past inspection of Metalcraft's products relates not to the legality of the award process but to contract administration. Social Systems Training and Research, Inc., B-182361, May 14, 1975, 75-1 CPD 294; Edward E. Davis Contracting Incorporated, B-179719, B-179720, January 20, 1974, 74-1 CPD 37. Matters of contract administration are not for resolution under our bid protest procedures which are reserved for considering whether an award, or proposed award, of a contract complies with statutory, regulatory and other legal requirements. See Inter-Alloys Corporation, B-182890, February 4, 1975, 75-1 CPD 79.

Finally, General was protested the waiver of first article testing of the product to be produced by Metalcraft under the subject IFB. It is General's contention that Metalcraft has a history of manufacturing fire extinguishers which fail and, in view thereof, first article testing should not have been waived. We note, however, that the amount bid by Metalcraft for first article testing (CLIN 0002) even if considered in the bid evaluation would not have displaced Metalcraft as the evaluated low bidder. Therefore, we see no reason to consider this allegation on the merits.

General's protest is therefore denied.


Acting Comptroller General
of the United States