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**DECISION**



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

**FILE: B-189604**

**DATE: January 18, 1978**

**MATTER OF: Olin Corporation**

**DIGEST:**

Cost comparisons required by Arsenal Statute for determination whether supplies can be obtained from Government-owned, contractor-operated (GOCO) factories on economical basis may be made by comparing fixed priced offers from contractor-owned and operated plants with out-of-pocket cost estimates from GOCO plants and such comparisons are not prohibited by Cost Accounting Standards Act.

Olin Corporation (Olin) protests the action of the U.S. Army Armament Materiel Readiness Command, Rock, Island, Illinois (Army) in allowing GOCO plants (Government-owned, contractor-operated) to compete under Request for Proposals (RFP) No. DAAA09-77-0028 and the basis on which offers from GOCO plants will be evaluated. Olin contends that permitting GOCO plants to submit estimates for cost reimbursement contracts while requiring COCO plants (contractor-owned, contractor-operated) to propose firm fixed prices is unfair and contrary to the decisions of this Office. It further contends that evaluating GOCO proposals on the basis of "out-of-pocket" costs violates the Cost Accounting Standards Act (CASA), 50 U.S.C. App. § 2168 and those standards issued thereunder which require all contractors including those operating GOCO plants to estimate and allocate indirect costs consistently and proportionately over all projects.

In this connection, Olin did not specifically invoke CASA until a conference held in this Office on September 15, 1977. The Army considers the CASA issue untimely under our Bid Protest Procedures, 4 C.F.R. § 20 (1977) because it was not raised within 10 days of the time the basis of protest

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was known or should have been known by Olin. In our opinion, the argument regarding the applicability of CABA is a consistent elaboration of Olin's objections to unfair competition between GOCO and COCO plants rather than a separate ground for protest. Thus, we believe the issue was raised in a timely manner and should be decided on its merits.

The RFP as issued on January 4, 1977, called for proposals for providing 12,100,000 rounds of .38 caliber special high velocity ammunition (PGU-12-B(YK)). It stated that a firm fixed price contract was contemplated but consideration of other types of contracts was not precluded. Olin submitted the only proposal, but requested relaxation of some technical requirements and deletion of RFP clauses pertaining to CABA and the Certificate of Current Cost or Pricing Data required by Armed Services Procurement Regulation (ASPR) § 3-807.3. It maintained that the PGU-12-B(YK) was the commercial equivalent to another .38 caliber round which was listed in its catalog and had been sold in substantial quantities to the general public. Although it contended that the PGU-12B(YK) was exempt from the cost or pricing data requirement, it did not submit DD Form 633-7 which the RFP and ASPR § 3-897.3 (j)(1) required from offerors claiming such exemption.

The contracting officer questioned whether the PGU-12-B(YK) had been sold commercially and concluded that it did not meet the standards permitting exemption from the requirement for submission of certified cost or pricing data. The price negotiations continued but Olin did not agree to provide the required cost or pricing data.

During negotiations, the Army obtained an estimate of "fully allocated" costs from the Lake City Ammunition Plant which is a GOCO facility operated by Remington Arms Company, Inc. (Remington) under a cost reimbursement contract with the Army. When Olin continued to refuse the cost or pricing data, Remington was asked to submit an "out-of-pocket" cost estimate. This estimate was obtained on July 8, 1977. The Army explains that fully allocated costs include all costs necessary to produce the required items including those costs which would still be expended whether or not the items

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were produced in the GOCO plant, while an out-of-pocket cost estimate excludes those costs which would be incurred by the GOCO contractor whether or not a particular contract was awarded to the GOCO plant.

On July 11, 1977, the contracting officer notified Olin that the RFP was cancelled. Olin then protested to this Office on July 14, 1977, at which point the Army reinstated the RFP and issued an amendment, dated July 19, 1977, increasing the total quantity to 23,248,000 rounds. (In this regard, the Army states that the RFP cancellation was inadvertent.) It also notified all offerors that operating contractors of GOCO plants could participate in the procurement and that their cost based proposals would be evaluated on an out-of-pocket cost basis with no evaluation factor added for their use of Government property and facilities. The amendment provided that award would be made on the basis of comparing the lowest out-of-pocket cost estimate of the GOCO proposals with the lowest evaluated cost of the COCO fixed price proposals.

As noted above, Olin objects to the requirement that COCO plants submit fixed price proposals which would be evaluated against out-of-pocket estimates for cost reimbursement contracts from GOCO plants.

We note that in Olin Corporation, 53 Comp. Gen. 40 (1973), Olin also contended that it was inequitable to compare a firm fixed price from a COCO offeror with a cost estimate from a GOCO offeror for a cost reimbursement contract. In that case, we stated:

"Army policy is to obtain direct fixed price competition among GOCO and COCO sources which are operated on that basis. However, where GOCO plants are operated under cost reimbursement type contracts, precluding such competition, cost comparisons are, in our view, necessarily utilized." (Underlined supplied.)

We see no reason to alter our position in this regard.

Olin next contends that CASA prohibits out-of-pocket cost estimates from GOCO contractors and requires that the cost comparisons under the Arsenal Statute be based

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upon formal proposals from both GOCO and COCO offerors and that such proposals fully comply with the requirements of CASH.

Specifically, the Arsenal Statute, 10 U.S.C. § 4532(a) provides that the Army shall have supplies made in factories or arsenals owned by the United States so far as those factories or arsenals can make the supplies on an economical basis. Under this provision, the term "factories" includes GOCO plants. The term "economical basis" means at an overall cost to the Government which is equal to or less than the cost if manufactured in a COCO plant. Such overall costs must be computed on the basis of actual out-of-pocket costs to the Government. See B-143232, December 15, 1960.

The requirements of CASH are applicable to both GOCO and COCO contractors, but in our opinion, CASH does not prohibit out-of-pocket cost estimates for purposes of the Arsenal Statute.

We see nothing in The Boeing Company, ASBCA No. 19224, February 18, 1977, 77-1 BCA 12,371, which Olin cites, to lend support for a position that CASH prohibits the use of out-of-pocket cost estimates when making cost comparisons for purposes of the Arsenal Statute. In that case the Armed Services Board of Contract Appeals concluded that a head count method of allocating certain state taxes which had been permissible under ASPR, Section 15, was no longer acceptable under new tests for allocation of home office expenses established under Cost Accounting Standard 403. Further, we see no useful analogies to be derived from any CASH required changes that may have occurred with regard to the definitions of "costs" for purposes of the Vinson-Trammell Act, 10 U.S.C. § 7300 (1970), the Renegotiation Act of 1951, as amended, 50 U.S.C. App. § 1211 et seq. (1970) or the Internal Revenue Code, 26 U.S.C. § 1 (1970) and their applications to Government contracts and contractors. To the extent that these statutes prescribe treatment of costs for Government contracts, they are concerned with the performance of such contracts after award. While Cost Accounting Standard 401 may require that a GOCO contractor use the same accounting practices in estimating costs in pricing contracts as are used in accumulating and

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reporting actual costs during performance; it does not explicitly or implicitly prohibit out-of-pocket cost estimates for purposes of the cost comparisons required by the Arsenal Statute.

When the solicitation to COCO offerors calls for fixed price offers, the Arsenal Statute requires a cost comparison between such offers and the GOCO out-of-pocket estimates for cost reimbursement contracts for purposes of determining whether the required supplies will be procured from a COCO plant or obtained from a GOCO plant. When it is determined that the supplies can be obtained on a economical basis from a GOCO plant, it is the practice of the Army to cancel the solicitation pursuant to Army Munitions Command Procurement Instruction 1.390.2(g)(4) and to negotiate a fully funded cost reimbursement contract with the contractor operating the GOCO plant. Such contract must bear its full share of all overhead and indirect costs and must be in full compliance with CABA.

Olin contends that the Army is soliciting under the pretense that an award will be made under the RFP when, in fact, the Army is seeking market information in order to make the judgment as to whether it should procure from the GOCO contractor. ASPR § 1-309 states it to be general policy to solicit proposals only where there is a definite intention to award a contract. Solicitations for information purposes are prohibited except by request for quotations, when approved by an authority higher than the contracting officer and there is notification in the solicitation that the Government does not intend to make an award. At all times, the Army intended to obtain its needed supplies. The source of those supplies depends upon cost comparison. The RFP makes it clear that the decisive factor in source selection and method of procurement will be costs to the Government as determined by comparing COCO fixed prices with GOCO out-of-pocket estimates. As an experienced GOCO and COCO contractor, Olin is aware of this process.

At this point, there is no outstanding demand of the Army for the submittal by Olin of certified cost or pricing data. Therefore, the issues raised by Olin with regard thereto need not be discussed in this decision.

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Accordingly, the protest is denied.

*Ernest B. Stead*

Comptroller General  
of the United States