

# DECISION



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

PL II

10,969

FILE:

B-194748

DATE: August 8, 1979

MATTER OF: Midwest Engine, Inc. DLG 02537

*[Protest of Solicitation Provision Concerning Pricing of Materials]*  
DIGEST:

1. Request that agency use list price minus discount pricing rather than cost method in solicitation for time and materials contract is denied where regulation states that time and materials contract must provide for procurement of materials at cost except in agency's discretion in circumstances not shown to exist in this procurement.
2. Protester is not competitively disadvantaged by pricing method used in another solicitation since it is not in competition with bidders in that procurement.

Midwest Engine, Inc. (Midwest), protests the award of any contract under invitation for bids (IFB) GSD-8DPR-90007 issued by Region 8 of the General Services Administration (GSA). The IFB is for an indefinite requirements, time and materials type contract for maintenance, repair and overhaul of equipment, engines and related items. AGC 00017

Midwest requests that the Government revise the solicitation provision which requires that materials be reimbursed at cost so that the contractor will be paid for materials on the basis of catalog or list price less discount. Midwest contends the agency has not been consistent in establishing methodology for pricing of materials as between various regions.

By definition a time and materials contract provides for procurement of material at cost. Federal Procurement Regulations (FPR) § 1-3.406.1 (1964 ed.). GSA states that Region 6 was permitted to deviate from this requirement because it was unable to obtain competition on any other basis in that region and that permission has since been withdrawn and future procurements will be consistent with other regions.

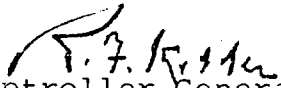
~~006087~~

The list price method of payment is permitted as an optional method for pricing materials when the contractor furnishes material which is regularly sold to the general public in the contractor's normal course of business and the total estimated contract price does not exceed \$25,000, or the price of the material to be so charged does not exceed 20 percent of the estimated contract price. FPR § 1-3.406-1(d). GSA states that using the list price method in this solicitation would violate the regulations. Midwest controverts this, but it has not shown that the circumstances exist that would make the option available. In any event, when the proper circumstances exist, the list price option is discretionary with the contracting agency, and GSA has determined that the cost method is appropriate.

Furthermore, we fail to see how Midwest is competitively disadvantaged by a pricing method used in another solicitation. All bidders in this case are required to compete on the same basis.

Midwest also protested the application of the Service Contract Act of 1965, as amended (41 U.S.C. § 351 et seq. (1976)) to this solicitation. As GSA has amended the IFB to Midwest's satisfaction, the issue is moot.

The protest is denied.

  
Acting Comptroller General  
of the United States