

DECISION



24-55
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-206882

DATE: January 18, 1983

MATTER OF: Ashland Chemical Company

DIGEST:

Protest that bid should be rejected as nonresponsive because it did not contain formula for composition of product and contained price list for only one of two components of product is denied where economic price adjustment clause did not require more information and where proper price adjustment can be made based on information in bid.

Ashland Chemical Company (Ashland) protests the award of a contract for JP-10 high density synthetic hydrocarbon fuel to Koch Refining Company (Koch) under invitation for bids No. F41608-81-B-0518 issued by the San Antonio Air Logistics Center, Kelly Air Force Base (Air Force), Texas.

Ashland contends that Koch's low bid should have been rejected as nonresponsive because the bid did not contain information necessary to permit proper postaward price adjustments under the economic price adjustment clause contained in the solicitation. We deny the protest because we conclude that Koch submitted all the information required by the clause, which is sufficient to permit price adjustments.

The contract is a requirements contract. Bids were to be made on a unit price per gallon of JP-10. Award was to be made to the low bidder on that basis.

The solicitation contained the "Economic Price Adjustment-Semistandard Supplies" clause, Defense Acquisition Regulation § 7-106.4 (1976 ed.). That clause essentially provides a system for postaward price adjustments based on fluctuations in the "established price" of the item bid. "Established price" is defined as "an established catalog or market price of a commercial item sold in substantial quantities to the general public." Upward or downward contract price adjustments are to be made in the same percentage as the upward or downward fluctuation in the established price. Upward price adjustments are limited to 10-percent per year of the original contract price.

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A companion clause, "Implementation of Economic Price Adjustments," was also included in the solicitation. That clause stated that "[t]he Contractor will submit as part of his bid" price lists or other documentation substantiating established prices. The clause, as amended by amendment 1 to the solicitation, also stated that "[p]rice lists may be submitted for Dicyclopentadiene [DICY] and Hydrogen." These are the two primary components of JP-10.

Finally, the cover page of the solicitation contained the following admonition:

"CAUTION TO BIDDERS: Contractors submitting bids on this solicitation are cautioned that clause entitled 'Implementation of Economic Price Adjustments,' in Schedule H, requires submission of specific information and supporting data. Failure to submit these items with the bid submission at or prior to the date of bid opening may render the entire bid nonresponsive."

It is undisputed that JP-10, because it is not a commercial product, has no established price. That is why the solicitation provided that price lists could be submitted for DICY and hydrogen.

Koch's bid included a price list for DICY, but no price list for hydrogen, because it will use internal refinery hydrogen, which has no established price.

Ashland contends that Koch's bid is nonresponsive because it did not contain a price list for hydrogen and it did not contain a formula describing the amount of each component consumed in producing a unit of JP-10.

According to Ashland, the failure of Koch to submit a price list for hydrogen effectively denies the Government its right to any price reductions based on hydrogen price decreases. Also, Ashland argues that, since JP-10 is formed as a result of a chemical reaction between hydrogen and DICY, without knowing how many units of each component are consumed in making one unit of JP-10, the Air Force cannot calculate the proper price change for JP-10 when the price of a component changes.

Ashland cites B-79898, December 10, 1948; 18 Comp. Gen. 320 (1938); and 17 Comp. Gen. 621 (1937), for the proposition that a bid that does not contain sufficient information to permit proper price adjustments should be rejected as nonresponsive.

The Air Force and Koch contend that the clause requesting price lists was worded permissively in recognition of the fact that some bidders might use components for which there was no established price, such as internal refinery hydrogen. The Air Force points out that there is no requirement in the solicitation for the submission of manufacturing formulas for the production of JP-10. According to the Air Force, the military specification fixes the chemical composition that JP-10 must have and that composition is readily obtainable by chemical analysis. Since the relationship by weight of the components in JP-10 is known, a price change per unit of JP-10 can be calculated when the price of a component changes.

The Air Force also cites our decision in Roarda, Inc., B-204524.5, May 7, 1982, 82-1 CPD 438, for the proposition that a requirement for submitting information in response to a price adjustment clause is not a matter of responsiveness where the price adjustment clause is not used to determine the low bidder. Since it was not used in that manner here, the Air Force argues that, even if Koch's bid does not contain sufficient information, it is still responsive.

Finally, the Air Force points out that Ashland is not prejudiced by any lack of information in Koch's bid, since Koch's price would remain low even if the price for DICY was escalated the maximum 10 percent allowable under the clause and if the price of hydrogen to Ashland was decreased to nearly nothing.

We generally agree with the Air Force. However, the Air Force has read Roarda, Inc. more broadly than is warranted. In Roarda, the protester argued that because certain price information was absent from the awardee's bid, the bid was nonresponsive. While we did mention that the price adjustment clause was not used to determine the low bidder, the case turned on the fact that the clause did not

require the information that was absent from the low bid. Consequently, the bid could not be found nonresponsive even if the information was necessary for accurate price adjustments. Here, the clause did require price lists for components of JP-10 for which there were established prices.

Concerning Koch's failure to include a price list for hydrogen in its bid, we find that the list was not required and that Koch's bid would be low no matter what downward fluctuation might occur in the price of hydrogen. The price adjustment clauses require price lists for items bid or components which have established prices. JP-10 has no established price, so no price list could be included. Koch is using internal refinery hydrogen which is not sold to the general public and, therefore, which also has no established price. Consequently, no price list is required by the clauses. In any event, the price difference between Ashland's and Koch's bids is so great that even if the established price of hydrogen fell to nothing and Ashland's bid price was adjusted accordingly, Koch's bid would still be low. Ashland was not prejudiced by Koch's omission of a price list for hydrogen, nor is the Government deprived of an economic benefit flowing from possible reductions in the price of hydrogen.

Concerning Ashland's argument that Koch's bid did not include a formula showing the amount of components consumed in producing a unit of JP-10, we find that the solicitation did not require such formulae and that such formulae are not necessary to the calculation of price adjustments. The explicit language of the price adjustment clauses does not require the inclusion of a formula showing the relationship of hydrogen and DICY to the production of JP-10. Consequently, it would not be proper to reject, as nonresponsive, a bid that failed to include such a formula. See, e.g., Roarda, Inc., supra. Also, as the Air Force points out, military specifications require that 98.5 to 100 percent of the content by weight of JP-10 be exotetrahydrodicyclopentadiene. This can be verified by chemical analysis. To achieve that percentage, 94 percent of the components by weight must be DICY. Using that relationship one can calculate the JP-10 price escalation based on changes in the price of DICY. Basing price escalations on a content rather than yield formula also protects the Government from any inefficiencies in the production of JP-10.

Finally, the cases cited by Ashland do not hold or imply that a bid lacking proper price adjustment information must be rejected as nonresponsive. In fact, the cases merely hold that a contractor may not receive an upward price adjustment if its bid did not contain the required information.

for Milton J. Acola
Comptroller General
of the United States