

**DECISION**

*University Research Corp*  
*24929*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-208986**DATE:** April 21, 1983**MATTER OF:** Deterline Corporation**DIGEST:**

1. Invitation for bids that did not clearly state that travel cost estimate would be used in bid evaluation and did not state how it would be used is defective, where travel costs were evaluated, because solicitation must apprise bidders of basis for bid evaluation. However, protester was not prejudiced by defect, since awardee's bid was low whether travel costs were evaluated or not.
2. Contrary to protester's assertion, agency did not change bid evaluation factor of travel cost estimate after bid opening where estimate was developed on a per unit basis and number of units being procured was reduced prior to bid opening, because estimate was automatically reduced at that time, even though actual calculation was not made until after bid opening.
3. Bidder's failure to certify in bid that it was a regular dealer or manufacturer does not render bid nonresponsive, since such information may be, and was, submitted prior to award.
4. Bidder's failure to certify that product will be produced by a small business is irrelevant, since procurement is not a small business set-aside.
5. Adequacy of bidder's place of performance is a matter of responsibility, not responsiveness and will not be reviewed by GAO.

Deterline Corporation (Deterline) protests the award of a contract to University Research Corporation (URC), under a two-step formally advertised procurement (solicitation Nos. RFTP-DABT60-82-R-0009 and -0006), issued by the

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United States Army Training Support Center (Army). The contract is for the design, development and production of 356 lessons of a training extension course.

Deterline argues that if the Army properly evaluated travel costs, its bid not URC's would be low. Deterline also contends that URC's bid is nonresponsive.

We deny the protest.

The second-step invitation for bids required bidders to enter fixed unit and extended prices for each item one through eight, and a total price for items one through eight. Item nine was not separately priced. Item 10 provided that travel (per diem and transportation) would be paid in accordance with section B.3 of the solicitation, plus the contractor's corporate general and administrative (G&A) percentage rate, with total travel reimbursement not to exceed an amount to be determined by the Government. Section B.3 of the solicitation provides that the contractor will be reimbursed actual travel costs and per diem, plus the percentage of actual costs represented by the G&A rate submitted with its bid. The bidder was to insert its corporate G&A rate in the blank provided at item 10. The total travel reimbursement figure was an estimate prepared by the Government and not revealed in the solicitation. The method of award clause stated that award would be made to the lowest bidder who submits a bid conforming to the solicitation and who is responsive and responsible.

URC bid \$3,237,907 for items one through eight and entered a G&A rate of 38 percent. Deterline bid \$3,311,815 with a G&A rate of 12.3 percent.

According to the Army, the estimate for travel costs was developed prior to the issuance of the solicitation and was based on the initial number of desired lessons--575. The estimate was \$660 per lesson, for a total of \$379,500. After that time, and still prior to the issuance of the solicitation the Army reduced the number of lessons to 356 but neglected to reduce the total travel estimate accordingly. After bid opening, the contract specialist realized that the estimate was now incorrect, and adjusted it to 356 x \$660 per lesson, or \$234,960.

In evaluating the bids, the Army applied each bidder's G&A rate to the \$234,960 travel cost estimate and then added

the resulting sum to the bid. URC's evaluated price was \$3,237,907 plus 38 percent of \$234,960 or \$3,562,152. Deterline's evaluated price was \$3,311,815 plus 12.3 percent of \$234,960, which equals \$3,575,675. Since URC's bid remained low, the Army awarded it the contract.

Deterline argues that the Army was required to use the original estimate, regardless of its accuracy, since it was in effect at bid opening. Deterline is the low bidder using that estimate. Deterline contends that changing an estimate after bid opening to be used in bid evaluation compromises the integrity of the competitive bidding system, and, in this case, raises the specter of favoritism toward URC since the changed estimate caused Deterline to be replaced as low bidder. Deterline cites our decisions in In Re Ellinor Corp., B-182384, April 23, 1975, 75-1 CPD 254 and 52 Comp. Gen. 215 (1972), for the proposition that it is improper to change an unrealistic estimate after bid opening. Deterline also contends that it is irrelevant that the change resulted from a reduction in the number of lessons, since the bid evaluation factor was based on the total travel allowance not on the per-lesson allowance. Finally, Deterline attacks the revised estimate as unrealistically low, claiming that its own figures support the initial total travel cost estimate.

The Army argues that the travel estimate has never changed, that it has always been \$660 per lesson and that only the number of lessons has changed, thus reducing the total estimate. The change in the quantity of lessons occurred prior to bid opening. The Army also contends that it would be improper to knowingly use an incorrect estimate in bid evaluation. The Army argues that Deterline could not have been prejudiced in the preparation of its bid, since neither total travel allowance was known to bidders until after bid opening. Finally, the Army contends that In Re Ellinor Corp., supra., does not apply to the facts here because there the bid evaluation was not performed in accordance with the scheme set out in the solicitation, while here it was.

URC, the awardee, contends that travel costs should not have been evaluated at all. URC argues that it is clear from the solicitation that award would be made based on the prices for items one through eight only. Moreover, URC states it is generally improper to evaluate costs as speculative as these in an advertised procurement, citing

our decisions in Allis-Chalmers Corporation, B-180301, March 26, 1974, 74-1 CPD 146, and 51 Comp. Gen. 645 (1972). URC argues that since it was clear from the solicitation that travel costs were not to be evaluated, then Deterline's post-bid opening protest that travel costs should be evaluated in the manner that it argues is untimely because GAO's Bid Protest Procedures at 4 C.F.R. § 21.2(b)(1) require such protests to be filed prior to bid opening.

We disagree with URC that travel costs should not be considered because they are too speculative. The cases cited by URC involve situations in which the solicitation did not indicate that the factors were quantified or would be evaluated in such a way as to affect bid prices. The Allis-Chalmers, case involved a claim by a bidder that its accelerated delivery schedule should result in a lowering of its bid price. We found that since the solicitation did not require separate prices for accelerated delivery, the claimed cost savings were conjectural and could not be evaluated. In 51 Comp. Gen. 645, the protester argued that award should be made at a higher price for an earlier building completion date because rental savings, operating efficiency, and other factors would result in an effective bid price lower than that bid for a later completion date. We found that those factors were too speculative to consider in that manner. The solicitation did not provide for quantification or consideration of those factors.

A travel cost estimate, such as this one, appears to be ascertainable with reasonable certainty, although of course, all estimates are inherently inexact. Using a travel cost estimate for bid evaluation is no more speculative or conjectural than using life-cycle cost estimates in bid evaluation--a practice that we have approved. See, e.g., Mor-Flo Industries, Inc., B-192687, June 5, 1979, 79-1 CPD 390. Consequently, we find that using a travel cost estimate in bid evaluation is not improper.

However, we find that this solicitation was ambiguous and, therefore, defective because it did not clearly state that travel costs would be evaluated or how they would be evaluated, and because the estimate was not revealed. In advertised procurements, the solicitation must clearly set forth the basis for bid evaluation so that all bidders may prepare their bids on a equal and well-informed basis. 36 Comp. Gen. 380, 385 (1956). Here, while the placement of the travel costs item in the bidding schedule and the

requirement for bidders' G&A rates indicates that the costs might be evaluated in some way, the method of award clause does not mention travel costs at all, and the solicitation does not state when or how the required information will be used. Additionally, the travel cost estimate should have been revealed and was not.

We also find that Deterline's protest is timely to the extent that Deterline is protesting that travel costs should be evaluated. The solicitation was ambiguous regarding whether travel costs would be evaluated. Consequently, the protest is not of a patent solicitation impropriety requiring protest prior to bid opening. In any event, the Army evaluated travel costs and Deterline's protest is concerned with the manner in which that evaluation was performed, and is clearly timely in that regard.

While, as we stated above, we find the solicitation to be defective, that defect did not prejudice Deterline, because URC remains the low bidder whether travel costs are evaluated or not. As stated above, URC is the low bidder without the evaluation of travel costs. Additionally, we find that the travel cost estimate was not changed after bid opening, and that URC was the low bidder under the travel cost estimate existing at bid opening.

While Deterline argues that it is not relevant that the change in the total travel estimate resulted from a reduction in the number of lessons, we disagree because that determined the timing of the change. We agree that changing an unrevealed evaluation factor after bid opening to displace a low bidder does raise the specter of bias and could compromise the integrity of the competitive bidding system. Here, however, the Army's cost estimates, supplied to us by Deterline, show that the travel cost estimate was in fact based on a per lesson cost of \$660 which was established prior to bid opening and was never changed. When the number of lessons was 575 the total travel cost estimate was \$379,500--the figure that Deterline claims was the estimate at bid opening. However, prior to bid opening the number of lessons was reduced to 356. At that time the actual travel estimate became \$234,960, based on the established figure of \$660 per lesson. That the original estimate with the wrong number of lessons still existed on a piece of paper at bid opening and that the actual multiplication of \$660 x 356 did not occur until after bid opening does not alter the fact that, since the estimate was on a per lesson basis,

when the number of lessons changed the estimate changed automatically and contemporaneously. Therefore, the proper estimate, in existence at bid opening, was applied and URC's bid remained low. Since we find that the estimate was not changed after bid opening, the cases cited by Deterline are inapposite.

For the first time on December 17, 1982, Deterline attacked the reasonableness of the Army's total travel estimate of \$234,960, claiming that it was too low. While this allegation was ostensibly made in response to an Army letter of December 3, 1982, it is based on information known to Deterline on October 19, 1982, when it received the Army's travel cost estimates pursuant to a Freedom of Information Act request. New protest issues, which this is, must independently satisfy the timeliness requirements of our Bid Protest Procedures. Tombs & Sons, Inc., B-206810.4, August 2, 1982, 82-2 CPD 100. In this case, to be timely this issue must have been filed within 10 working days of October 19, 1982, which it was not. 4 C.F.R. § 21.2(b)(2) (1983). Consequently, we will not consider this issue.

Deterline also contends that URC's bid is nonresponsive because URC did not certify that it is a regular dealer or manufacturer of audiovisual training course material, because URC stated that it was a small business, but failed to state that the product will be manufactured by a small business, and because the place of performance listed in URC's bid was not a manufacturing facility. Deterline argues that the cumulative effect of the deficiencies is to create doubt as to whether URC's bid binds it to perform the contract. Consequently, the bid as submitted is nonresponsive.

Regarding the specific contentions, § 12-603 of the Defense Acquisition Regulation (1976 ed.) provides that a bidder may establish that it is a regular dealer or manufacturer up to the time of award. B-165186, November 7, 1968. URC completed the certification prior to award, and we have been advised that URC has been found to be a regular dealer or manufacturer. URC's failure to state that the product would be manufactured by a small business is irrelevant, since the solicitation was not set aside for small business. Finally, the adequacy URC's listed place of performance is a matter of responsibility, and we do not review affirmative determinations of responsibility, absent

circumstances not relevant here. See, e.g., Instrument Corporation Lamp Division, B-205261, B-205261.2, March 1, 1982, 82-1 CPD 177.

Protest denied.

*for* *Harry R. Van Cleave*  
Comptroller General  
of the United States