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**DECISION**



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

**FILE:** B-220306 **DATE:** January 24, 1986

**MATTER OF:** Harnischfeger Corporation

**DIGEST:**

Protest alleging that the bid determined low on basis of evaluation that includes certain transportation costs might not result in the lowest cost to the government if the bidder changes production sites is without merit where the bidder is obligated to pay transportation costs exceeding those used for evaluation purposes and also represents in its Buy American certification the country of origin for each line item.

Harnischfeger Corporation protests an award to Koehring Company under invitation for bids (IFB) No. DAAE07-84-B-J104, issued by the United States Army Tank-Automotive Command, Warren, Michigan, for the procurement of cranes. Harnischfeger, the second low bidder, contends that there is no assurance that Koehring's bid is in fact low because, under the terms of its bid, Koehring may produce cranes in either its domestic or foreign plants, thereby potentially increasing the government's shipping costs.

We deny the protest.

Through this two-step sealed bid procurement, the Army sought to satisfy its needs for two types of 7-1/2-ton, wheel-mounted hydraulic cranes for a 5-year period. The protest involves the Army's evaluation of step-two prices for one type, general purpose cranes, of which 968 are to be delivered in stated yearly increments. The Army anticipates a need for the cranes at various locations in the United States, Korea, and the Federal Republic of Germany. As a result, the IFB divided some of the yearly increments into two line items, one requiring preservation and packing for export and long-term storage (level "B") and the other requiring preservation and packing for routine applications (level "C"). The solicitation

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provided that the Army might exercise options to increase the quantity of each line item by up to 100 percent.

The IFB did not specify that the line items requiring level "B" preservation and packing would be used in Germany. However, it designated the number of cranes required at specific locations each year, and the number for Germany (and for shipment to Hawaii and Korea) corresponded to the line items requiring level "B" preservation and packing. Similarly, the numbers for the continental United States corresponded to the line items requiring level "C" preservation and packing.

For evaluation purposes, the solicitation provided that for cranes produced within the United States, the Army would estimate its shipping costs either from the contractor's plant to the designated delivery points within the country or, in the case of delivery points outside the United States, from the contractor's plant to the port of discharge. For cranes to be produced and delivered in the same foreign country, no shipping costs were to be assessed.

Three firms submitted bids by the August 30, 1985, opening date. Koehring's and Harnischfeger's bids listed the number of general purpose cranes that each would produce annually in Germany and in the United States; these corresponded to the cranes that the Army estimated would be required annually for delivery in Germany and in the United States (including Hawaii and Korea).<sup>1/</sup> The Army evaluated both bids as having no shipping costs for the cranes produced in Germany. On this basis, Koehring's evaluated price, \$55,351,518, was low, and Harnischfeger's, \$55,721,007, was second low. The Army awarded Koehring a contract on September 17, and Harnischfeger protests that award.

Harnischfeger argues that the Army's cost evaluation was deficient because Koehring's bid only states the number of cranes to be produced annually in Germany and does not tie the place of production to a particular line item, that is, to a particular type of preservation and packing.

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<sup>1/</sup> Both Koehring and Harnischfeger proposed to produce in the United States cranes intended for Hawaii and Korea, which were included in line items requiring level "B" preservation and packing.

Harnischfeger, on the other hand, did, in its response to the inspection clause, state where the cranes listed in each line item would be produced. The significance of this, according to Harnischfeger, is that Koehring is free to produce cranes in the United States for shipment to Germany and in Germany for shipment to the United States. This allegedly could result in the Army paying transportation costs of approximately \$4,000 a crane for overseas shipment, should Koehring choose to produce its cranes on a basis other than the one used for evaluation. If this happens, Harnischfeger continues, Koehring could more than offset the approximately \$370,000 difference between its bid and Harnischfeger's by changing the production site of less than 100 cranes. Such a change is a real possibility, in Harnischfeger's opinion, because production costs are substantially lower in Germany. Harnischfeger concludes that because award to Koehring may not actually result in the lowest cost to the government, the Army should have rejected the bid.

Harnischfeger's arguments fail to note provisions of Koehring's bid that limit the government's shipping costs and that identify Koehring's place of production. In particular, paragraph H28 of the IFB provides that if the contractor ships from a point other than that used for evaluation purposes, any increase in transportation costs is to be borne by the contractor. Here, the Army reasonably evaluated Koehring's bid on the assumption that certain quantities of cranes would be produced each year at each of the two plants identified in Koehring's bid, and that these cranes would be delivered where produced. Under paragraph H28, if Koehring unilaterally switches its production between the two plants and increases the government's shipping costs, Koehring will bear those additional costs.

Also, in paragraph K22, the Buy American certification, Koehring identifies the quantity of cranes to be produced in Germany each year by contract line item, specifying the line items requiring level "B" preservation and packing. Koehring's Buy American certification precludes foreign manufacture of those cranes not identified in its certification. Hybrid Technology Group, Inc., B-215168, Oct. 3, 1984, 84-2 CPD ¶ 385. Thus, in our view, Koehring's contract requires it to produce the cranes required for delivery in Germany (i.e., using level "B" preservation and packing) at its German plant and to produce the cranes required for delivery elsewhere at its domestic plant.

Moreover, we fail to see the economic advantage to Koehring from changing production sites. Harnischfeger concedes that Koehring is obligated to produce a fixed number of cranes in Germany and in the United States each year. The firm's annual production costs therefore will be virtually the same whether a particular crane is produced in one country rather than another, since the total number produced in each country may not change.

Harnischfeger asserts that even if Koehring's bid obligates it to produce the initial contract quantities at the sites used for evaluation purposes, Koehring will be able to produce option quantities at either site. Under paragraph H29 discussed above, the contractor is only liable for transportation costs exceeding those used in the bid evaluation. Since transportation costs for option quantities were not evaluated, the contractor would not be liable for transportation costs irrespective of where it delivers the cranes covered by the option.

As noted above, unless a bidder states in its Buy American certification that a line item will not be produced in the United States, the contractor must provide domestic products. We believe that this obligation extends to all cranes produced under applicable line items, including quantities increased at the government's option. Thus, Koehring must supply cranes produced at the firm's United States facility if the Army exercises an option with respect to the line items for which Koehring certified cranes would be of domestic origin (i.e., those line items requiring level "C" preservation and packing). On the other hand, for those line items requiring level "B" preparation, Koehring as well as Harnischfeger only certified that the number of cranes for delivery in Germany would be produced in Germany. In the third year, four cranes required for Hawaii and, in the fourth year, 20 cranes required for Korea are to be produced in the United States. If the Army exercises an option for level "B" cranes in those years, it is conceivable that, as the protester argues, the contractor will assert that it may determine where to produce the cranes, since the initial cranes were to be produced in both Germany and the United States.

We believe that the better interpretation of Koehring's contract is that it is obligated to produce any option quantities in a manner consistent with its bid on the base quantities--including its designation of production sites, its allocation of production quantities between

those sites, and its Buy American certification tying production quantities to its German plant by line item. Under this reading of the contract, if the Army exercised an option for 100 percent of the line items requiring level "B" preparation and desired all of them for use in Germany, Koehring would be obligated to produce all but 24 in its German facility. Using the protester's estimated shipping costs, it would cost the Army only \$48,000 to ship the 24 cranes to Germany. This expense is considerably less than the approximately \$370,000 difference between the two bids. Irrespective of the requirements of Koehring's contract regarding the production sites for option quantities, however, the question is not relevant to determining the low bidder since, under the terms of the solicitation, option prices were not to be evaluated. Unless the Army knows in advance where it may require additional cranes or which delivery site would result in the lowest transportation costs, possible transportation costs of option quantities cannot reasonably play a role in determining the low bidder. Consequently, the possibility that Koehring might claim that it may select the production locations for some of the cranes under two line items that the Army may require in the future does not establish that the Army improperly determined that Koehring was the low bidder.

The protest is denied.

*for Seymour Efros*  
Harry R. Van Cleve  
General Counsel