



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Action Industrial Supply

File: B-224819

Date: January 6, 1987

DIGEST

1. Allegation that the contracting agency used improper basis for transportation costs in evaluating bids, raised in initial protest but not mentioned by protester after it was refuted in procuring agency's report, is considered abandoned and will not be considered on the merits.
2. Protest against evaluation factors set forth in solicitation is untimely when filed after bid opening.
3. Where protester's calculation of shipping costs is based on external dimensions of truck trailer without considering the area occupied by truck walls, door and shipping skids, it is inaccurate and does not support the argument that procuring agency's calculation of these costs was incorrect.

DECISION

Action Industrial Supply Corporation (Action) protests the Department of the Army's award of a contract to Lerman Container Corporation (Lerman) under invitation for bids (IFB) No. DAAK01-86-B-C251 for oil sample bottles. Action questions the basis upon which bid prices were evaluated and alleges that the Army miscalculated shipping costs that were added to the protester's bid.

We dismiss the protest in part and deny it in part.

The solicitation contemplated award of a 3-year requirements contract for oil sample bottles. The IFB required bids to be based on three successive ordering periods and to be priced on an f.o.b. origin basis (i.e., for delivery to a carrier at the bidder's facility). Action and Lerman submitted the only bids, with Action offering to supply the bottles for \$14.25, \$14.35 and \$14.39 per unit during the first, second and third ordering periods, respectively, and Lerman offering a unit price of \$14.40 for each of the ordering periods.

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Action initially protested that the Army had added a bid price differential to Action's bid price to reflect the cost of shipping the goods by railroad and that this was inappropriate because the goods would be shipped by commercial trucklines. Since Action's f.o.b. origin prices were lower than Lerman's, the protester reasoned that if shipping costs were accurately applied, Action's total bid amount would be low.

The Army responded to this protest issue in a report to our Office and asserted that bids were evaluated on the basis of the lowest-cost shipping method for each bidder. Specifically, the Army reported that Action's bid was evaluated by adding the cost of shipping by commercial trucklines rather than by rail as alleged by Action. In its comments on the Army's report, Action did not rebut the Army's explanation. We therefore consider this protest issue abandoned and will not consider it further. See Spectrum Analysis & Frequency Engineering, Inc., B-222554, Aug. 1, 1986, 86-2 CPD ¶ 136.

Action also protests that in Section M, "Evaluation Factors for Award," the IFB provides that for the purpose of evaluating offers, the final destination for all of the supplies remaining to be furnished under the contract after the first delivery will be considered to be the New Cumberland Army Depot in New Cumberland, Pennsylvania. The protester argues that the first delivery quantity is to be shipped to three different destinations and that the use of the New Cumberland destination in evaluating shipping costs for all subsequent deliveries gives an unfair competitive advantage to bidders producing the supplies in that area.

Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to that date. 4 C.F.R. § 21.2(a)(1) (1986). Here, the provision being challenged was in the IFB when it was issued. Consequently, this portion of Action's protest, filed after bids were opened and the contract was awarded, is untimely and will not be considered on the merits.

The protester also alleges that the Army's calculation of Action's shipping costs was incorrect, since it was based on shipping fewer containers per truckload than the maximum number per truckload that Action proposes to ship. Action asserts that it can load 3,240 of its shipping containers on a 45-foot truck trailer, whereas the Army's calculation of costs is based on shipping 2,904 containers per truckload. Action argues that if the larger quantity of containers per

truckload is used, Action's shipping costs are reduced from \$16,153.44 to \$12,058.64, making Action's total bid amount lower than Lerman's.

In response, the Army notes that Action describes its shipping containers as 12 inches long, 8 inches wide, and 15 inches high; the external dimensions of a standard 45-foot truck trailer are 45 feet long, 8 feet wide, and 8 feet high. Using the container dimensions provided in Action's bid, the agency points out that 3,240 containers will not really fit in a standard 45-foot truck. This number of containers will only appear to fit if the thickness of the truck's walls and door are ignored and the space occupied by the shipping skids (60 in number, according to Action) is overlooked. The agency notes that truck walls and doors are generally 3 inches thick and shipping skids are generally 4 inches thick. Thus, an accurate measure of the internal dimension of a truck trailer is obtained by reducing the external length and width measurements by 6 inches each, to account for walls and doors. The height must be reduced by 8 inches, to account for 2 layers of shipping skids. Once this has been done, each truckload will accommodate only 2420 containers in an upright position. If the containers are placed on their sides, instead of their base, then 2904 containers will fit. However, the agency points out that containers cannot be stacked on their sides without increasing the risk of damage in shipment, since the bottom layer of containers must bear at least 70 pounds of weight when the truck is fully loaded.

We find the Army's basis for evaluating transportation costs in this manner to be reasonable. It is clear that the internal dimensions or shipping capacity of the truck must take the thickness of the walls, door, and shipping skids into account. Furthermore, in our view it is reasonable to assume that shipping containers are designed to bear the most weight when stacked in an upright position. In addition, the agency points out that the delivery schedule set forth in the IFB provides for shipping the bottles at a rate of only 10,000 per month and therefore the contractor will not necessarily be shipping the maximum number of containers that can be accommodated per truckload. The protester's calculations, based on fitting the maximum number of containers of bottles in each truckload, are therefore an inaccurate projection of actual shipping costs.

Accordingly, we conclude that the protester has not shown that the Army's evaluation of bids was unreasonable. We therefore deny this portion of the protest.

Finally, Action contends that Lerman's bid was nonresponsive because it did not include a figure for differential costs for shipping by railroad in a space provided in section F.5 of the IFB for this purpose. Action alleges that the failure to include this cost was "an obvious mistake" and that it was improper for the agency to assume there would be no charge for this expense. We disagree. The IFB merely provides the option for bidders to submit this information; it does not require that they do so. The pertinent language in the solicitation states that "the offeror may indicate differentials that may be added to the offered price." In these circumstances, we find no merit to the protester's allegation that the omission of this information rendered Lerman's bid nonresponsive. Accordingly, this portion of the protest is denied.

The protest is dismissed in part and denied in part.

for Seymour Egan
Harry R. Van Cleve
General Counsel