



The Comptroller General
of the United States

Washington, D.C. 20548

McArthur

Decision

Matter of: Paccar Defense Systems
File: B-232530.2
Date: January 3, 1989

DIGEST

Under a two step procurement, awardee's step two bid for base and option quantities is not considered materially unbalanced, and thus subject to rejection as being nonresponsive, where the protester fails to show that the option quantities were not reasonably expected to be exercised and that award to firm will not result in the lowest ultimate cost to the government.

DECISION

Paccar Defense Systems protests the award of a contract to Freightliner Corporation under invitation for bids (IFB) No. DAAE07-88-B-J069 issued by the U.S. Army Tank-Automotive Command. The protester contends that the awardee's bid is nonresponsive because it is unbalanced.

We deny the protest.

On February 19, 1988, the agency issued the solicitation for production and delivery of the M915A2 truck tractor and the M916A1 light equipment transport as the first step of a two-step-sealed-bid procurement in accordance with the Federal Acquisition Regulation (FAR), Subpart 14.5 (FAC 84-12). In step one, offerors submitted technical proposals but did not submit prices or cost estimates; in step two, each firm that had submitted an acceptable technical proposal in step one was invited to submit a sealed bid. The agency desired to purchase a nondevelopmental item which would meet performance specifications and required that all potential bidders offer vehicles comprised of commercially proven components, i.e., manufactured, marketed and sold in substantial quantities within the heavy truck transport industry for at least 1 year prior to issuance of the IFB.

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Four offerors submitted technical proposals on April 29, 1988, the agency determined that all four had submitted acceptable proposals and that each proposal demonstrated that the proposed configuration and components had met the product experience qualification requirement. On July 11, the agency invited all four potential contractors to submit bids under step two by August 23 for 385 truck tractors and 397 equipment transports, plus a 200 percent option to be exercised by 1991. The IFB stated that in accordance with FAR § 52.214-10 (FAC 84-5) a firm, fixed-price contract would be awarded to the responsible bidder, whose bid, conforming to the solicitation, would be most advantageous to the government considering only price and the price-related factors specified elsewhere in the solicitation. These price related factors included exercise taxes for foreign sources and transportation charges for F.O.B. origin terms. In addition, the solicitation included FAR § 52.217-5 (FAC 84-37) which advised bidders that the government would evaluate bids on the total price for the base requirement and all options, and further advised that the government could reject an offer as nonresponsive if it were materially unbalanced as to prices for the basic requirement and the option quantities.

Two of the corporations that submitted acceptable technical proposals declined to participate in the second step, leaving Freightliner and Paccar as the only bidders. The protester offered a price of \$98,657,574 for the basic quantity, versus Freightliner's price of \$108,686,488. Nevertheless, Freightliner's option prices were so much lower than the protester's that its total evaluated bid price of \$252,401,448 (versus \$283,290,340 for the protester) was determined to be low overall.^{1/}

On September 20, 1988, the agency awarded contract No. DAAE07-88-C-J915 to Freightliner; Paccar filed this protest 3 days later, charging that the Freightliner bid was materially unbalanced and should have been rejected as nonresponsive.

^{1/} Freightliner bid \$113,266 per unit for the basic M915A2 quantity, \$75,362 per unit for the option quantity; Paccar bid \$97,990 per unit for the basic and \$98,851 per unit for the option. For the M916A1, Freightliner bid \$146,598 per unit for the basic quantity and \$109,270 per unit for option quantities; Paccar bid \$140,371 per unit and \$138,063 per unit respectively. The total bid price included various support items.

Our Office has recognized that unbalanced bidding entails two aspects. The first is a mathematical evaluation of the bid to determine whether each bid item carries its share of the cost of the work plus profit, or whether the bid is based on nominal prices for some work and enhanced prices for other work. The second aspect--material unbalancing--involves an assessment of the cost impact of a mathematically unbalanced bid. A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the government. Consequently, a materially unbalanced bid may not be accepted. See Applicators, Inc., B-215035, June 21, 1984, 84-1 CPD ¶ 656.

Freightliner explains that its bid was designed for recovery of all volume independent one-time costs over the base quantity. Such costs included some engineering costs, plant investment, such as purchase of management information system hardware and software and changeover costs due to military quality control constraints and learning curve. The protester argues that there should be no substantial "one-time" cost inasmuch as the awardee should have been offering and should supply commercially available, proven nondevelopmental items; the protester charges that Freightliner's higher first year costs cannot be attributed solely to nonrecurring costs.^{2/}

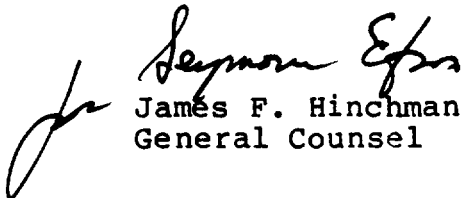
However, even assuming that Freightliner's bid was mathematically balanced, there must also be a showing that it was materially unbalanced. Gichner Mobile Systems, B-216172, May 13, 1985, 85-1 CPD ¶ 534. In this regard, the

^{2/} Paccar also argues, in the alternative, in its report comments filed November 16, that Freightliner must not be offering commercially available, nondevelopmental items and that it was therefore nonresponsive to the step one request for technical proposals. The protester offers no support for this allegation beyond Freightliner's low price. Since the protester bases its protest on the acceptance of Freightliner's low price, of which it was aware on or about September 20, the date of award, its protest should have been filed within 10 days of that date as required by our Bid Protest Regulation § 21.2(a)(2) (1988), and thus is untimely. In any event, we have reviewed the agency's technical evaluation of Freightliner's proposal in camera and have found no evidence to support this allegation. In this connection, several of the major components offered by Freightliner are the same commercially available models offered by Paccar.

agency advises that while some funding of this program has been cut from recent appropriation bills, the record indicates that there is money and interest from both the Army Reserve and National Guard sufficient to insure exercise of the option quantities. The record further indicates that the breakeven point for exercise of the option, that is the quantity at which Freightliner becomes low is as follows: 419 truck tractors or 342 equipment transports or 188 of each vehicle. This means that the Army needs to exercise approximately 25 percent of the option quantity before Freightliner becomes low. The Army reports its projection is for funds sufficient to obtain 288 option vehicles in fiscal year 1989 and 118 vehicles in 1990. The Army also reports that the 200 percent option was predicated on anticipated purchases by the National Guard and other service reserves. In this connection, the Army reports that the National Guard plans to buy 300 equipment transports and the Army Reserve 75 equipment transports and that other service reserves have expressed interests in acquiring these vehicles, but are delaying firm orders pending the completion of first article testing.

Our Office has found material unbalancing only where estimates for the work in question are not valid or where evaluated options are not reasonably expected to be exercised. Sletten Construction Co., B-227829.2, Nov. 24, 1987, 87-2 CPD ¶ 511. While the protester discusses in depth the funding difficulties affecting this procurement, its disagreement with the agency's expectation of obtaining funding does not establish as unreasonable the agency's expectation of buying sufficient option quantities to insure that Freightliner's bid will ultimately provide the lowest cost to the government.

The protest is denied.


James F. Hinchman
General Counsel