



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mid-American Elevator Co., Inc.

File: B-237282

Date: January 29, 1990

DIGEST

1. Under a construction contract, elevator dispatching system which is to be incorporated into the building constitutes construction material under the Buy American Act. Therefore, awardee's foreign made group overlay controls, as components of the system, do not violate the Act's prohibition against the use of foreign construction material.
2. Award to higher priced, higher technically rated offeror is not objectionable where technical considerations outweighed cost in solicitation's award criteria, and the agency reasonably concluded that the awardee's superior proposal provided the best overall value.

DECISION

Mid-American Elevator Co., Inc., protests the award of a contract to Armor Elevator Company, Inc., under request for proposals (RFP) No. 89-B-15, issued by the United States Railroad Retirement Board (RRB), for elevator modernization. Mid-American contends that Armor's proposal does not meet the Buy American Act provisions in the solicitation and that Mid-American should have received the award based on its lower priced proposal.

We deny the protest.

The RFP solicited proposals for renovating and placing in service two passenger elevators and replacing the existing elevator dispatching system for the bank of eight elevators. The RFP evaluation formula noted that technical factors had twice the weight of price. Technical proposals were to be evaluated under two major factors, technical capabilities

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and equipment, and experience and qualifications. Each of these factors consisted of several subfactors.

After discussions were held with all offerors, award was made to Armor on September 28, 1989, at a price of \$702,000. Mid-American's best and final offer was \$678,312. Armor received a final technical score of 200 and Mid-American's technical score was 182.22 points. The total weighted point score for both technical and price for Armor was 296.63 and 282.22 for Mid-American.

Mid-American's first basis of protest is that Armor proposes to furnish group overlay controls, which are a part of the elevator dispatching system, made in Finland. The protester argues that these controls are a separate article and exceed the 50 percent cost limitation on components imposed by the Act.

Under construction contracts, like the one at issue here, the Act requires that only domestic construction materials be used. Under the implementing regulations, construction materials mean items that are brought to the work site for incorporation into the building. Federal Acquisition Regulation § 25.201. Under the regulations, domestic construction materials mean items manufactured in the United States if the cost of its components exceed 50 percent of the cost of all its components. Id. Thus, in order for the Act to apply to the group overlay controls they must be considered construction materials and they also must contain foreign components of the requisite value.

Based on the awardee's certification that it offered domestic items and on the information it submitted to the agency concerning the nature of the group overlay controls and the cost of its foreign components, we think that the agency properly accepted Armor's proposal.

According to the RFP, the contractor is required to install a new group dispatching system for the eight elevators. A part of that system is the group system controls, otherwise known as group overlay controls. While the awardee admits that a significant part of the group overlay controls are of foreign manufacture, the information supplied by that firm shows that the group overlay controls are a part of the overall group dispatching system. According to the awardee, the group dispatching system is assembled from the group overlay controls and other components at the firm's Louisville facility and it is programmed and tested there. Since the entire system is assembled and then transported to the construction site for incorporation into the building, the entire control system, rather than the group overlay

controls, constitutes the construction material to which the percentage test must be applied. See 46 Comp. Gen. 813 (1967).

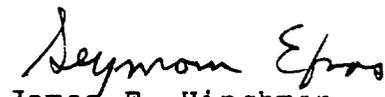
Based on the cost figures supplied to the agency by Armor, it is clear that the group overlay controls do not exceed 50 percent of the cost of the end product--the dispatching system. This basis of protest is therefore denied.

As noted earlier, technical considerations were weighted twice as important as price under the RFP evaluation scheme. Award to a higher-rated, higher-priced technical proposal is not objectionable where, as here, the solicitation award criteria makes technical considerations substantially more important than price, and the agency reasonably concludes the awardee's superior proposal provided the best overall value. Pan Am World Serv., Inc., B-235976, Sept. 28, 1989, 89-2 CPD ¶ 283. The agency, in its recommendation for award, noted that Armor had the highest technical rating and was only 3.4 percent higher in price than the lowest priced proposal received and that award to Armor was most advantageous to the RRB. We have no basis to object to the award decision.

Finally, Mid-American contends that Armor's proposal was improperly evaluated under two criteria regarding compatibility with other equipment and software documentation. Mid-American argues that if the proposals were properly evaluated, its technical proposal would have received a higher score than that of Armor.

We have reviewed the scoring of the proposals and in the two areas of concern to Mid-American, Mid-American did receive the same or a higher score than Armor. Moreover, the issues of compatibility and software documentation were discussed by the agency with Armor during negotiations and the agency determined that Armor's revised best and final offer complied with the RFP's requirement. We have carefully reviewed the evaluation record and we find no basis upon which to object to the agency's technical judgment in the scoring or evaluation of the proposals. See Physical Sciences Inc., B-236848, Jan. 10, 1990, 90-1 CPD ¶ ____.

The protest is denied.

for 
James F. Hinchman
General Counsel