



Comptroller General  
of the United States  
Washington, D.C. 20548

**Matter of:** Glen Industrial Communications, Inc.  
**File:** B-248223  
**Date:** May 19, 1992

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for the protester.  
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GAO, participated in the preparation of the decision.

**DIGEST**

Protest is sustained where the solicitation for the lease of a security system expressly invited the submission of front-loaded offers, but the agency rejected the protester's low overall evaluated offer precisely because it was front-loaded.

**DECISION**

Glen Industrial Communications, Inc. (GIC) protests the award of a contract to Davison Electronics, Inc. (DEI) under request for proposals (RFP) No. DCA100-92-R-1003, issued by the Defense Information Systems Agency, Communications Systems Support Group, for the installation, lease, and maintenance of an integrated security system for a new government communications facility. The protester argues that the agency improperly rejected its low overall evaluated offer as materially unbalanced. We sustain the protest.

The solicitation, issued on February 3, 1992, contemplated the award of a firm, fixed-price contract for the installation, lease, and maintenance of a state-of-the-art (1) intrusion alarm system, to be installed within 60 days of award; (2) access control system, to be installed within 90 days of award; and (3) CCTV surveillance system, to be installed within 120 days of award. These three systems would be integrated into a single security system for use in a new government communications facility.

The solicitation schedule listed five line items. Line item No. 0001 required firms to insert a price for the job of "provid[ing] all necessary labor, materials, [and] equipment" for the installation of the integrated security

system, with the phased-in installation being completed within 120 days of award. The contractor was required to submit an equipment price list for line item No. 0001. The contractor's invoices for the installation of the three individual systems would be paid at the completion of each installation phase. Line item No. 0001 also included a subline item which required firms to insert a price per month for the lease and maintenance of the integrated system for a 3-month base period. The price per month was to be multiplied by 3 to arrive at an extended price for the base period. Line item Nos. 0002 through 0005 corresponded to four consecutive 12-month lease and maintenance option periods. For each of the option period line items, firms were required to insert a price per month for the lease and maintenance of the integrated system. The price per month was to be multiplied by 12 to arrive at an extended price for each of the option periods. For the lease and maintenance base and option periods, the contractor would be paid on a monthly basis.

The solicitation emphasized that the agency intended to lease, not purchase, the integrated system. Clause C.1.2 of the Statement of Work (SOW) stated that "[f]or pricing purposes the offeror may choose to recoup equipment costs under (line item No.) 0001 or amortize the costs over the option(s)." The RFP included the provision at Federal Acquisition Regulation (FAR) § 52.217-5 which stated that the government would evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The RFP also included the provision at FAR § 52.215-16 which advised that the government could reject an offer as unacceptable if the prices proposed were materially unbalanced between line items. As defined by that section, a materially unbalanced offer is one based on prices significantly less than cost for some work and prices significantly overstated for other work, provided that there is a reasonable doubt that the offer will result in the lowest overall cost to the government even though it may be the low evaluated offer.

Five firms submitted offers, with detailed equipment price lists, by the amended closing date of February 20. The agency conducted discussions with each offeror. Following discussions, the agency requested the submission of best and final offers (BAFO) by March 23. GIC was the apparent low overall evaluated offeror. In its BAFO, for line item No. 0001, GIC inserted a price for the job of installing the integrated system which reflected its up-front costs incurred for equipment, freight, engineering and installation, warranties, required spare parts, and combined

overhead and profit.<sup>1</sup> For the subline item of line item No. 0001, GIC inserted a price per month for the 3-month lease and maintenance base period which was more than 3 times greater than its price per month for each of the line items corresponding to the four consecutive 12-month lease and maintenance option periods. Under GIC's pricing methodology, it would recoup approximately 90 percent of its total price by the end of the phased-in installation period (within 120 days of award).

DEI was the apparent second low overall evaluated offeror. Its BAFO price for line item No. 0001 was substantially less than GIC's price. However, for the 3-month lease and maintenance base period (the subline item of line item No. 0001) and for each of the line items corresponding to the four consecutive 12-month lease and maintenance options periods, DEI inserted a price per month which, although internally consistent, was approximately six times greater than GIC's price per month for these periods. Under DEI's pricing methodology, it would recoup approximately 40 percent of its total price by the end of the phased-in installation period. The other three firms would recoup approximately 30 percent to 70 percent of their total prices by the end of the phased-in installation period.

The contracting officer rejected GIC's offer as materially unbalanced. While GIC's offer represented the lowest overall cost if all of the options for the lease and maintenance of the integrated system were exercised, the contracting officer concluded that if intervening events (for example, technological advancements, funding changes, or mission requirement changes) prevented the agency from exercising all of the options, GIC's offer ultimately would not result in the lowest cost to the government.

On April 1, the agency awarded a contract to DEI. On April 3, GIC filed this protest. On April 7, the agency notified our Office and the protester that pursuant to the Competition in Contracting Act of 1984, 31 U.S.C. §3553(d) (1988), the head of the contracting activity authorized contract performance notwithstanding the pending protest since urgent and compelling circumstances significantly

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<sup>1</sup>In view of the possible additional proposals that may follow from our recommendation in this protest, we do not disclose GIC's price for line item No. 0001 (GIC's "for the job price"), including equipment. We do note that in its BAFO, GIC submitted the identical price for line item No. 0001 as it did in its initial proposal. During discussions, the agency never identified GIC's price for line item No. 0001 as defectively unbalanced or impermissibly front-loaded.

affecting interests of the United States did not permit waiting for our decision on the protest.

GIC argues that the rejection of its offer as materially unbalanced was improper, asserting that it properly priced its offer, particularly line item No. 0001, to reflect its legitimate, up-front costs for labor, materials, and equipment. GIC explains that if it had allocated these costs over the potential maximum period of contract performance and the agency failed to exercise any of the options, it would not be paid for all of those costs. Although GIC, in the event of termination of the lease, could remove the system from the government facility, GIC argues that no market would exist for the sale or use of virtually all of the used components of the system.

An offer is materially unbalanced where it is mathematically unbalanced (each item does not carry its share of the cost of the work specified for that item as well as overhead and profit, and the offer is based on nominal prices for some of the work and enhanced prices for other work) and will not result in the lowest cost to the government. See Westbrook Indus., Inc., B-245019.2, Jan. 7, 1992, 71 Comp. Gen. \_\_\_\_, 92-1 CPD ¶ 30. A grossly front-loaded offer, that is, one that includes a significantly disproportionate share of total evaluated contract costs in a line item for which payment will be made prior to performance of work required by other line items, typically is regarded as mathematically unbalanced on its face. Although the front-loaded pricing may reflect start-up and equipment costs, the government expects such costs to be apportioned over the entire evaluated contract period; offerors who front-load those costs are in effect shifting the risk from themselves to the government that the contract will not extend through the entire evaluation period. As we stated in Westbrook, the government generally is under no obligation to accept that risk.

In this case, the solicitation expressly invited front-loading. Clause C.1.2 of the SOW permitted offerors to recoup their equipment costs under line item No. 0001 instead of amortizing them over the base and option periods of the contract, and there is no suggestion in the record that GIC's item No. 0001 costs exceed the costs of the equipment it would furnish plus the other costs associated with installation. We do not think an agency can invite offers on a particular basis and then reject an offer precisely because it is submitted on that basis. In fact, agency counsel concedes that clause C.1.2 was overlooked when the decision was made to reject GIC's offer and states that "this mistake deprived the protest[er] of the award.  
. . ."

Accordingly, we sustain the protest. It is not clear, however, that award to GIC is appropriate. The agency's submissions suggest that it did not intend to invite significant front-loading through the use of clause C.1.2. and may not view this procurement as one appropriate for such front-loading. Therefore, we are recommending that the agency determine whether current agency needs require the front-loading of equipment costs as allowed by clause C.1.2.<sup>2</sup> If so, DEI's contract should be terminated for convenience and award made to GIC.<sup>3</sup> If not, then the agency should reopen discussions, modify the solicitation to clearly express its intention, and obtain a new round of BAFOs. The award should then be made to the successful offeror and DEI's contract terminated, if DEI is not the successful offeror. We also find GIC entitled to recover the costs it incurred in filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1992).

The protest is sustained.



Acting Comptroller General  
of the United States

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<sup>2</sup>An example of where such an approach would be appropriate is discussed in Applicators, Inc., B-215035, June 21, 1984, 84-1 CPD ¶ 656, and Roan Corp., B-211228, Jan. 25, 1984, 84-1 CPD ¶ 116. In those cases, we recognized that equipment costs could be allocated to a base period of performance where the contractor would have no use for the equipment following contract performance and therefore would not recover its costs if contract options were not exercised.

<sup>3</sup>We believe that termination of the award to DEI is appropriate since the parties represented to our Office that if we expeditiously issued our decision, meaningful corrective action could be taken if we were to sustain the protest. We recognize that by letter dated May 7, the agency stated that the integrated security system must be completely installed by July 31, and that any delays in completing the installation would drastically impact the security interests of the United States. The agency also established that to date, DEI's costs of performance only amounted to approximately \$89,000. However, we also recognize that GIC has stated that it can accelerate the installation of the integrated security system and it can use substantially all of the equipment installed to date by DEI because of the compatibility of the equipment.