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

## Decision

**Matter of:** Gold Line Refining, Ltd.

**File:** B-248600

**Date:** September 3, 1992

Ronald H. Uscher, Esq., Bastianelli, Brown & Touhey, for the protester,

Anne B. Perry, Esq., and James D. Bachman, Esq., for Barrett Refining Corporation, an interested party.

Howard Phifer, Esq., Defense Logistics Agency, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

General Accounting Office will not disturb the award where there is no evidence in the record that an agency's reliance on a single informational quote for barge transportation services in evaluating the protester's f.o.b. origin offer for fuel did not represent the lowest, best available rate.

### DECISION

Gold Line Refining, Ltd. protests the evaluation of its f.o.b. origin price per gallon offer to deliver a quantity of F76 naval distillate fuel for use by various military and civilian user activities under request for proposals (RFP) No. DLA600-92-R-0062, issued by the Defense Logistics Agency, Defense Fuel Supply Center. The protester alleges that the agency failed to use the lowest, best available transportation rate in evaluating its offer.

We deny the protest.

The solicitation, issued on September 23, 1991, contemplated the awards of firm, fixed-price contracts for the delivery of a total quantity of 261,153,000 gallons of F76 from April 1, 1992, through March 31, 1993, with a 30-day carryover period. Of this total quantity, 197,626,800 gallons were to be awarded on an unrestricted basis and 63,526,200 gallons were to be set aside for awards to small disadvantaged businesses. The solicitation invited offers on the basis of both f.o.b. origin (i.e., for delivery to a carrier at the offeror's facility) and f.o.b. destination (i.e., for delivery to the government facility). With

regard to f.o.b. origin offers, the solicitation provided that the "best available" transportation rates in effect or to become effective prior to the initial shipment and on file or published at the initial proposal due date would be used in the evaluation. When rates are not on file or published, the agency's procedure is to request quotes from transportation companies for the evaluation of f.o.b. origin offers. The solicitation stated that the awards would be made to the responsible offerors whose offers, conforming to the solicitation, would be most advantageous to the government. In determining the most advantageous offerors, the agency calculated the combination of f.o.b. origin and f.o.b. destination awards which would result in the lowest overall cost (F76 and transportation costs combined) to the government for the entire East/Gulf Coast region.

Nine firms, including the protester, submitted offers. The protester, a small disadvantaged business, submitted the second highest price per gallon offer to deliver by barge on an f.o.b. origin basis 34,020,000 gallons of F76 from its refinery located on the Calcasieu River in Lake Charles, Louisiana. The agency evaluated the protester's price per gallon offer, including barge transportation costs, from its refinery in Lake Charles to various locations including the agency's Defense Fuel Support Points (DFSP) in Houston, Texas, and Pensacola, Florida.<sup>1</sup> The agency evaluated the protester's f.o.b. origin offer using \$0.034048 per gallon as the barge rate from Lake Charles to Houston and \$0.046429 per gallon as the barge rate from Lake Charles to Pensacola. On March 17, 1992, the agency accepted the protester's per gallon price and awarded a contract to the protester as the most advantageous offeror for 5,235,000 gallons of F76 (2,995,000 unrestricted gallons and 2,240,000 set-aside gallons) to be delivered by barge on an f.o.b. origin basis from its Lake Charles refinery to the DFSPs in Houston and Pensacola.

On March 26, the protester, referencing commercial barge rates as low as \$0.009285 per gallon, filed an agency-level protest contending that the \$0.034048 per gallon rate used by the agency to evaluate its f.o.b. origin offer from Lake Charles to Houston was unreasonably high. The protester speculated that the lowest, best available rate was not used to evaluate its offer because the agency, instead of requesting competitive quotes for barge services, improperly relied on a rate quoted by an incumbent barge carrier which had experience, albeit not exclusive experience, in loading

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<sup>1</sup>The DFSPs in Houston and Pensacola receive F76 directly only by barge. From these locations, the F76 can be transported by tanker, barge, pipeline, rail, or truck to particular user activities.

and transporting F76 and other types of fuel from the protester's refinery. The protester alleged that as a result of the agency's application of an unreasonably high rate to evaluate its offer, it was unfairly denied the opportunity to receive an award for a greater volume of F76.

By letter dated April 29, the agency denied the protester's agency-level protest. The agency explained that since there were no barge rates for the Lake Charles to Houston route on file at the time the protester submitted its initial offer, it used the rate of \$0.034048 per gallon quoted by an incumbent barge carrier which had a current contract with the agency to barge JP-4 jet fuel from the protester's Lake Charles refinery. Because the volume of F76 offered by the protester was relatively small and at most, only one load of F76 from the protester's refinery would be needed each month, a long-term charter, which would have been significantly less expensive, was not available from the incumbent carrier. For these reasons, the agency solicited and used at the time of the evaluation a spot rate quoted by the incumbent carrier for one-time, individual shipments. Such rates are volatile and will change for each shipment, depending on time, weather, and market conditions.

The agency further explained that it considered the incumbent carrier the "most familiar with the unusual loading conditions at the protester's refinery," namely, the navigation techniques for moving multiple barges through a "salt water barrier," or mechanically opened gate, at the river site of the protester's refinery, and with the requirements for handling and transporting military, as opposed to commercial, fuel products. The military transportation requirements provide that barges be fully cleaned if the immediate prior barge shipment was of commercial fuel and also specify barge inspections. The agency finally discussed the accuracy of the incumbent carrier's rate with the incumbent carrier itself. For these reasons, the agency concluded that the incumbent carrier submitted the lowest, best available rate with which to evaluate the protester's offer from Lake Charles to Houston.

On May 5, the protester filed its protest with our Office. In the agency report filed in response to the protest, the agency reiterated its grounds for denying the protester's agency-level protest. In addition, the agency again explained that barge rates are not constant and will always fluctuate based on market and other conditions. Because of these fluctuations, the agency stated it could not now, 3 months after evaluating the protester's f.o.b. origin offer, reconstruct the external conditions which were present at the time of the evaluation in order to independently verify the reasonableness of the incumbent carrier's rate. Instead, the agency reported that it requested and received

current informational quotes from three local, experienced barge carriers, including the incumbent carrier, after explaining to each of them the factors which they should consider in arriving at their quoted rates. These factors included the "unusual loading conditions" at the protester's refinery and the fact that the fuel would be used to satisfy military, as opposed to commercial, requirements. While the three current rates received were all less than the incumbent carrier's initial rate used to evaluate the protester's offer, the agency attributed these lower current rates to seasonal and other market fluctuations. The agency maintained that because the incumbent carrier submitted the lowest of the three current informational quotes (\$0.018571 per gallon), there was no reason to believe that at the time of the evaluation of the protester's offer that the incumbent carrier's initial rate was not the lowest, best available rate.

When an agency solicits offers on the basis of either or both f.o.b. origin or f.o.b. destination, the regulations require that the offers be evaluated to determine the lowest overall cost to the government. Federal Acquisition Regulation (FAR) § 47.305-2. Since the government must pay for the transportation of goods purchased on an f.o.b. origin basis, the agency is required to add the lowest available freight rates and related charges to f.o.b. origin offers in order to compare these offers with f.o.b. destination offers that include transportation to the government facility. See Isometrics, Inc., B-219057.3, Jan. 2, 1986, 86-1 CPD ¶ 2, aff'd, B-219057.4, May 21, 1986, 86-1 CPD ¶ 474. The transportation rates and related charges used in the evaluation of an f.o.b. origin offer must be the lowest available and must be in effect or become effective before the expected date of initial shipment and on file or published at the initial proposal due date. Id.; FAR § 47.306-2. When transportation rates are not on file or published at the time of submission of initial offers, and the solicitation provides no guidance concerning what the basis for evaluation of transportation costs for an f.o.b. origin offer should be, we think an agency properly may rely on informational quotes from transportation carriers to determine the lowest available transportation rate for evaluation of the f.o.b. origin offer so long as the information relied on does not lead to an improper or unreasonable evaluation of the f.o.b. origin offer. See Fiber-Lam, Inc., 69 Comp. Gen. 364 (1990), 90-1 CPD ¶ 351.

Here, because there were no barge rates for the protester's Lake Charles to Houston route on file or published at the time the protester submitted its initial offer, we believe the agency could properly rely on informational quotes to determine the lowest, best available rate with which to evaluate the protester's f.o.b. origin offer for the route.

However, for the agency to have reasonably and on an independent basis determined that the incumbent carrier's informational quote for the route did in fact represent the lowest, best available rate in the competitive marketplace, we believe that at the time of the evaluation of the protester's offer, the agency should have solicited informational quotes from more than one local, experienced barge carrier, just as it did in filing its agency report responding to this protest. From the record, it appears that the incumbent carrier is not the only company with the requisite experience to transport F76 on this route or that the agency was correct that no rate competition could be obtained because of the salt water barrier or the requirements for shipping a military product.

However, we find that there is no persuasive evidence in the record which shows that the incumbent carrier's barge rate used to evaluate the protester's second highest price per gallon offer was not in fact the lowest, best available rate for the Lake Charles to Houston route. While the protester references lower commercial barge rates as support for its position that the agency used an unreasonably high rate to evaluate its f.o.b. origin offer for this route, the record shows that government rates are not comparable to commercial rates because of the more extensive handling requirements, particularly those involving barge cleanings and inspections, which increase the costs associated with transporting government fuel by barge. Moreover, for other contemporaneous barge routes which were evaluated, the record shows that the rate used to evaluate the protester's second highest price per gallon offer was comparable to rates used to evaluate lower price per gallon offers. For these reasons, we find no basis to disturb the award.<sup>2</sup>

Accordingly, the protest is denied.

  
James F. Hinchman  
General Counsel

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<sup>2</sup>The protester, which submitted the second highest price per gallon, argues that it was prejudiced because a rate as low as one cent per gallon was not used in evaluating its f.o.b. origin offer. However, as stated above, the protester's referenced rate is for commercial barge services which are not comparable to military barge services, and in any event, there is no evidence in the record that the rate requested by the protester to be applied to its offer was available to any firm at the time of evaluation for other routes.