

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

C1154097910

FILE: B-185262

DATE: July 19, 1976

MATTER OF: Sayles Biltmore Bleacheries, Inc.

DIGEST:

1. Where RFP did not specifically provide for consideration of transportation costs in proposal evaluation, procuring activity could properly consider such costs since applicable procurement regulations require consideration of transportation costs and since consideration of such costs was not contrary to terms of solicitation. However, to avoid confusion on part of offerors, GAO recommends that future solicitations state that transportation costs will be considered in proposal evaluation.
2. Fact that RFP provision stated that transportation costs would be paid by procuring activity does not preclude acceptance of innovative proposal whereby offeror would transport cloth to to its finishing and dyeing plant in its own trucks at less cost than was available through common carrier.
3. Proposal evaluation was deficient in that only a portion of transportation costs to be paid by Government was added to offerors' prices. Although protester was not prejudiced since addition of omitted costs would not change offerors' competitive standing, agency is advised to evaluate all transportation costs borne by Government under future similar solicitations.

On August 15, 1975, the Defense Supply Agency (DSA) placed an order with the Department of Justice, Federal Prison Industries, Inc. (FPI) for cotton duck cloth, approximately equal amounts of which were to be delivered on an FOB origin basis to DSA depots at Richmond and Memphis. Eleven days later, FPI issued Request for Proposals (RFP) No. 2pi 9139 for the finishing of cloth manufactured at the federal penitentiary in Atlanta. The RFP contemplated that the unfinished cloth would be shipped from the penitentiary to the contractor, who would dye the cloth and treat it with water repellent and mildew resistant chemicals, after which the cloth would be shipped to DSA at Richmond and Memphis. Paragraph 6 of the RFP in General Provisions stated in pertinent part:

"All transportation charges for greige goods shipped from Federal Prison Industries, Inc., Atlanta, Georgia, to finishing plant will be paid by Federal Prison Industries, Inc. All transportation charges for finished goods shipped from the finishing plant to consignee will be paid by the Government * * *."

We note that although the procurement nominally was negotiated, the agency refers to it as though it were formally advertised, as shown by the terms "invitation for bids", "bids" and "bidders" contained in the agency's report to our Office and the "Abstract of Bids". We see no reason why formal advertising would not have been appropriate in this instance, and are bringing this apparently improper use of negotiation authority to the attention of the Attorney General.

Although paragraph 6 of the solicitation did not specifically provide therefor, the evaluation of proposals included the consideration of transportation costs from FPI's Atlanta plant to the plants of the various offerors. Evaluation of the Sayles Biltmore and Riegel proposals, applicable transportation tariffs considered, resulted in the following:

	<u>Riegel (Trion, Georgia)</u>	<u>Sayles-Biltmore (Asheville, North Carolina)</u>
Finishing and dyeing charge	\$0.3207 per yard	\$0.3175 per yard
Transportation cost from FPI to offeror's plant	\$0.0032 " "	\$0.00807 " "
Total Cost	<u>\$0.3239</u>	<u>\$0.32557</u>

It can be seen that Sayles Biltmore's offer was the lowest received if the price for finishing and dyeing alone is considered. However, if the cost of shipping the cloth to each offeror's plant is added, the lower rate applicable to Riegel results in that firm having the lowest evaluated bid. Not only were commercial freight rates lower to Riegel's plant, but in its proposal that firm made the alternate offer to transport the cloth in its own trucks for \$.0025 per yard, which was even less than the commercial rate. FPI determined that award to Riegel would be in the best interest of the Government and made award to that firm.

Sayles Biltmore contends that it was entitled to award on the basis of its lower price for finishing and dyeing. It is the protester's position that FPI improperly included the cost of transportation from FPI's Atlanta plant to the plants of the offerors in the evaluation of offers and that Riegel's offer to transport the cloth via their own vehicles at FPI's expense was not permitted by the solicitation. In support of these contentions, Sayles Biltmore argues that paragraph 6 of the solicitation's "General Provisions" precluded the inclusion of transportation costs in offer evaluation as well as the submission of offers under which the offeror, rather than a common carrier, would transport the cloth. The issues in this case, therefore, are whether FPI properly could consider the cost of transportation in evaluating proposals and, if so, did FPI, in accepting Riegel's offer to finish, dye, and transport the cloth to its plant via its own vehicles, place Sayles Biltmore on an unequal competitive footing with Riegel.

It appears from the record of evaluation submitted by FPI in response to Sayles Biltmore's protest that the addition of transportation costs to the Riegel and Sayles Biltmore finishing and dyeing proposals rendered Riegel the offeror submitting the proposal least costly to FPI, under either its offer to provide transportation at a rate less than the applicable tariff or under transportation tariffs applicable to the distance between FPI's Atlanta plant and Riegel's finishing plant.

As for the propriety of considering such costs in proposal evaluation, paragraph 10(a) of Standard Form 33A, Solicitation Instructions and Conditions, of the subject RFP provides as follows:

10. "AWARD OF CONTRACT. (a) The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government price and other factors considered." (Emphasis added).

We believe this provision placed the protester on notice that factors other than its finishing and dyeing price would be considered in determining the proposal most advantageous to the Government. As for Sayles Biltmore's contention that paragraph 6 of the solicitation's "General Provisions" precluded the consideration of transportation costs, we point out that paragraph 6 does nothing more than state that the cost of transportation

will be borne by FPI and the Government. While we recognize that the solicitation did not specifically provide for the consideration of transportation cost in proposal evaluation, neither did the solicitation purport to exclude consideration of such costs.

In any event, Federal Procurement Regulations (FPR) § 1-19.203 (1964 ed. amend. 1) requires the procuring activity to consider factors relating to the cost of transportation when evaluating either bids or proposals. See also FPR §§ 1-3.102(a) (1975 ed. amend. 153) and 1-19.101 (1964 ed. amend. 1). Moreover, decisions of this Office have repeatedly rejected the argument that the solicitation's failure to specifically mention transportation costs as an evaluative factor precluded their consideration. See 52 Comp. Gen. 679, 682-683 (1973) and cases cited therein.

Accordingly, considering the fact that the addition of transportation cost as a factor in proposal evaluation was not contrary to the terms of the solicitation and in view of applicable procurement regulations requiring the considerations of such costs, we are unable to conclude that FPI improperly considered the expense of transporting the cloth as a factor in the evaluation of proposals. However, in order to avoid confusion on the part of offerors in the future, we are recommending to the Attorney General that solicitations state that transportation costs will be considered in proposal evaluation.

Sayles Biltmore also contends that FPI improperly accepted Riegel's proposal to transport the cloth via its own trucks at a rate less than the otherwise applicable transportation tariff. While, as indicated previously, Riegel's proposal to finish and dye the cloth at \$0.3207 per yard was less costly than Sayles Biltmore's proposal of \$0.3175 per yard, applicable transportation tariffs considered, the protester nevertheless insists that FPI's acceptance of the Riegel proposal was contrary to the terms of paragraph 6 of the solicitation's "General Provisions" which, so far as is here pertinent, provided that FPI would pay for the costs of transporting the cloth from its plant in Atlanta to the contractor's finishing plant. We disagree.

Neither paragraph 6 nor any other solicitation provision purports to advise offerors that the Government will furnish transportation or that a particular mode of transportation will

be utilized. Rather, paragraph 6 goes no further than to state that the Government will pay for the transportation, no attempt being made to set forth the manner in which FPI's transportation requirements will be satisfied.

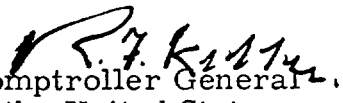
Thus, we are unable to agree with the protester's contention that because the solicitation stated that FPI would pay for the cost of transporting the cloth, FPI was precluded from accepting a proposal under which the offeror would furnish the transportation for less than a common carrier. Rather than constituting an offer deviating from the solicitation's stated requirements, the Riegel proposal would be viewed as an independent and innovative approach to satisfying the procuring activity's actual requirements in a manner not inconsistent with paragraph 6 of the solicitation's "General Provisions."

Inasmuch as FPI neither specifically solicited or even discussed with Reigel its offer to furnish transportation at a rate less than applicable tariffs, we are unable to conclude that Sayles Biltmore was not permitted to compete with Riegel on an equal basis or that all offerors were not provided a common basis for the submission of proposals. Union Carbide Corporation, B-184495, February 26, 1976, 55 Comp. Gen. _____, 76-1 CPD 134.

Our review of the record has disclosed a deficiency, unmentioned by the protester, which in our view deserves comment. Although the Government was to bear all of the costs of transporting the cloth, the agency's evaluation of proposals took into account only the costs of transportation from Atlanta to the offerors' plants. We believe the additional costs of transportation from the offerors' plants to the DSA depots in Richmond and Memphis also should have been included in the evaluation. It appears from freight rate information contained in the agency's report that Sayles Biltmore was not prejudiced by this omission because Riegel would have remained the low offeror even if this additional factor were added to the offerors' prices. However, we are advising the Attorney General of this deficiency so that it may be corrected in future similar procurements.

Accordingly, for the foregoing reasons, the protest is denied.

Deputy


Comptroller General
of the United States