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DECISION



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

FILE: B-189362

DATE: November 28, 1977

MATTER OF: Entron, Inc.

DIGEST:

1. Determination of lowest bidder on an FOB origin basis may properly include consideration of transportation costs estimated on basis set forth in solicitation. Evaluation on such basis is proper even though actual delivery points, known at bid opening, differ from tentative delivery points specified in IFB.
2. Protester's claim of entitlement to waiver of first article testing under solicitation provision will not be considered where denial of waiver did not prejudice protester's competitive position.

Entron, Inc. (Entron), has protested award of a contract to another bidder under invitation for bids (IFB)-DSA900-77-B-1370, issued by the Defense Electronics Supply Center (DESC), Dayton, Ohio.

The IFB was issued on April 11, 1977, as a total small business set-aside for the purchase of "ringing generators, hand joint type G-42A/PT, NSN 5805-00-503-1469." Bidders were required to submit incremental bids in five unequal steps for the furnishing of between 1,000 and 14,999 units and could bid on either or both an FOB origin and/or FOB destination basis. First article testing was required but could be waived under the following provision:

"1. Preproduction testing; may be waived:

"a. For any contractor whose latest first article approval date for the required item is within 24 months of the issue date of the solicitation and who proposes to reproduce identical items, using the same tools, facilities and component types previously used."

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The cost of first article testing, if not waived, was to be prorated over the items ordered.

Four bids were received. The per-unit bids of Entron and the awardee, Star Dynamic (Star), were as follows:

| Quantity: | 1,000- 3,299 | 3,300- 5,999 | 6,000- 8,499 | 8,500- 10,999 | 11,000- 14,999 |
|-----------|------------------|-----------------|-----------------|------------------|-------------------|
| Entron | FOB Origin 14.75 | 14.45 | 14.35 | 14.30 | 14.25 |
| | FOB Dest. ----- | No Bid----- | | | |
| Star | FOB Origin 15.00 | 14.38 | 14.38 | 14.38 | 14.38 |
| | FOB Dest. 15.30 | 14.63 | 14.63 | 14.63 | 14.63 |

First Article Charge: Entron - \$500; Star Dynamic - \$4,000

DESC had a firm commitment for 5,177 units at the time of bid opening. After evaluation of the bids and other information submitted by the bidders, DESC determined that Star was the only bidder qualified for waiver of first article testing. Analysis of the bid prices was based on advice to the contracting officer from transportation officials that the transportation costs applicable to the Star and Entron bids would be equal. No consideration therefore was given to transportation costs, since they would only cancel out, and the Star and Entron FOB origin bid prices were compared directly. Star was the low bidder. Star was awarded contract No. DSA900-77-C-4404 on June 13, 1977, for the purchase of the required items at Star's FOB destination price.

Entron contests the agency's evaluation of its bid and contends that had an evaluation been made of the actual freight charges to be added to its price, Entron would have been entitled to the award. In this connection, Entron states that the agency was aware at the time of bid opening of the actual destinations of the items for which a contract was awarded and that the addition to Entron's bid price of freight costs from its manufacturing facility to the known destinations would have resulted in a lower overall cost to the Government. While the agency concedes that no exhaustive evaluation of transportation costs was performed prior to award, a detailed evaluation comparing the transportation costs applicable to the Star and Entron FOB origin bids was performed in response to Entron's protest and now forms part of the record. We note that this analysis verifies that the transportation costs applicable to these two bids are equal.

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The IFB incorporated the provisions of section 7-2003.23(d) (1976 ed.) of the Armed Services Procurement Regulation (ASPR) pertaining to the evaluation of FOB origin bids. This section provides as follows:

"Land methods of transportation by regulated common carrier are normal means of transportation used by the Government for shipment within the United States * * *. Accordingly, for the purpose of evaluating bids * * *, only such methods will be considered in establishing the cost of transportation between bidder's * * * shipping point and destination (tentative or firm, whichever is applicable), in the United States * * *. Such transportation cost will be added to the bid * * * price in determining the overall cost of the supplies to the Government. When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to utilize any other means of transportation or any other destination at the time of shipment."

The DESC post-protest evaluation was performed in accordance with this paragraph. Shipping points were determined in accordance with the provisions of the IFB: for Entron, the shipping point was Glendale, New York; Star's shipping point was determined to be North Bergen, New Jersey.

Shipping destinations for evaluation purposes were established in accordance with the provision of the IFB entitled "Destination Unknown," ASPR § 7-2003.24(a) (1976 ed.). Under this provision, the evaluation was to be based on the shipment of 3,639 units to the Defense Electronics Supply Center, Dayton, Ohio, and 1,538 units to the Defense Depot Ogden, Ogden, Utah. Published trucking tariffs obtained from the Military Traffic Management Command were used in the evaluation. This analysis shows that the freight costs for Entron and Star are identical--\$995.23. The computation of overall cost to the Government is as follows:

| | Entron | Star | |
|----------------------|-------------|-------------|-------------|
| | FOB Orig. | FOB Orig | FOB Dest |
| Unit Price | \$14.45 | \$14.38 | \$14.63 |
| x Quantity | 5,177 | 5,177 | 5,177 |
| Total Price | \$74,807.65 | \$74,445.26 | \$75,739.51 |
| + Transportation | 995.23 | 995.23 | --- |
| Total Cost to Gov't. | \$75,802.88 | \$75,440.49 | \$75,739.51 |

(Not including First Article Testing)

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Entron contests this evaluation on the basis that use of its Glendale, New York Office address was improper for the purpose of evaluating transportation costs and contents, as noted above, that the evaluation should have been based on the actual delivery points, since they were known to the contracting officer at the time of bid opening.

Regarding the protester's first contention, Entron's bid shows Morganville, New Jersey, to be the place of performance; Entron argues that the transportation analysis is invalid because it was not evaluated from that point. We do not agree.

The IFB incorporated by reference the provisions of ASPR § 7-2003.24(c) (1976 ed.), entitled "Shipping Point(s) Used in Evaluation of FOB Origin Bids (or Proposals)," which provides in part that "if the bidder * * * fails to indicate any shipping point or plant, the Government will evaluate the bid * * * on the basis of delivery from the plant at which the contract will be performed, as indicated in the bid or proposal. If no such plant is indicated in the bid * * *, then the bid * * * will be evaluated on the basis of delivery from the contractor's business address indicated on Standard Form 33." However, this language, which would have permitted evaluation of Entron's transportation costs on the basis of its specified place of performance, Morganville, New Jersey, was superseded by the requirement of section "H," para. 1(c), page 13, of the solicitation for designation by the offeror of its proposed shipping point. This latter provision states in part that "if the offer fails to specify a shipping point the shipping point shall be considered to be the same as the address shown in block No. 17 of SF-33." The relative priority of these two provisions is mandated by ASPR § 7-2003.41 (1976 ed.), incorporated in the IFB by reference.

Entron failed to specify its shipping point. In accordance with the IFB, the procuring activity was therefore required to evaluate entron's transportation costs on the basis of its Glendale, New York Office, as specified in block No. 17 of the SF-33 accompanying Entron's bid.

Entron's second argument concerning the evaluation of transportation costs would require that the FOB origin bids be considered on a basis other than that set forth in the IFB. This

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does not comport with the general rule that bids must be evaluated on the basis of the method specified in the solicitation. 38 Comp. Gen. 550 (1959); 45 Comp. Gen. 433 (1966); B-173444, December 21, 1971. This is true even though an alternative method might result in a lower overall cost to the Government. 52 Comp. Gen. 278 (1972). Furthermore, we have long taken the position that the determination of the lowest responsible bidder under an advertised procurement may properly include consideration of costs over and above the bid price which would be incurred upon award to each bidder, provided that such costs can be ascertained with reasonable certainty. See 45 Comp. Gen. 59, 68 (1965). When such costs are reasonably foreseeable, an agency properly may issue an IFB which provides that the evaluation of bids will include the addition of foreseeable costs to the bid price. Newport Shipyard, Inc., B-187391, November 15, 1976, 76-2 CPD 415. Conversely, where it has been impractical to estimate transportation costs because of uncertainty about the delivery points of ordered items, we have approved an administrative determination to exclude transportation costs from consideration. 52 Comp. Gen. 679 (1973); see also 52 id. 997 (1973).

In this case, the hypothetical delivery schedule incorporated in the transportation cost evaluation scheme of the IFB conforms closely to the actual needs of the agency. We view this as confirmation of the reasonableness of the agency's estimates. In these circumstances, we see nothing improper in the agency's application of the delivery criteria of the IFB for the evaluation of transportation costs and we perceive no prejudice to Entron in the agency's failure to make an exhaustive evaluation prior to award.

Entron also has questioned whether the agency's evaluation of Star's bid might have included consideration of a 10-day prompt payment discount offered by Star since the IFB required a minimum payment period of 20 days in order for discounts to be considered. The record before us, however, provides no evidence that any consideration was given to Star's offered 10-day discount.

We note parenthetically that the contract award was made to Star at its FOB destination price which appears to exceed the total cost to the Government of award to Star at its FOB origin price.

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In this connection, however, the record reflects that after it had been determined that Star was the low bidder, an estimate of transportation costs applicable to Star's bid was prepared for the sole purpose of determining whether to award to Star on an FOB origin for FOB destination basis. This estimate shows the transportation costs total \$1,396.12, including \$300 for the issuance of six Government Bills of Lading (GBL), which added to Star's FOB origin price results in a cost to the Government greater than if award were made to Star on an FOB destination basis. We have held that in the absence of an express provision in the solicitation, the use of certain indefinite or speculative administrative costs as evaluation factors is inappropriate, see 35 Comp. Gen. 282, 284 (1955); 33 Comp. Gen. 108 (1953), and that proposals should be evaluated on the basis set forth in the solicitation. These decisions, however, have considered this question in the context of competition between bidders for an award. In this case, the administrative cost of issuing GBL's was considered only after the awardee was selected and only for determining the basis of award, i.e., FOB destination vs. FOB origin, so as to ascertain which basis was most advantageous to the Government. Consideration of the cost of issuing the GBL's had no effect on competition. In these circumstances, and since the estimated cost of issuing GBL's does not appear unreasonable, we will not question the award to Star at its FOB destination price.

Entron also contends that it was entitled to waiver of first article testing under the cited provision of the IFB on the basis of an approval obtained in August 1970 and subsequent waivers of testing, the most recent of which is on a contract issued by DESC on November 16, 1976. However, we note that waiver of the first article testing requirement for Entron would not have affected its competitive position, inasmuch as the cost for such testing was not included in the evaluation. In these circumstances, we see no reason to review the agency's determination not to waive first article testing. See Julian A. McDermott Corporation, B-187705, B-188197, April 18, 1977, 77-1 CPD 266.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States