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Pro. Law I
N. Staloff

DECISION



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

FILE: B-190818 DATE: July 7, 1978
MATTER OF: Capital Industries, Inc.

DIGEST:

1. The Navy, in evaluating transportation costs, is not limited to commercially available modes of transportation, where military transport is more economical.
2. Where bidder fails to provide information in its bid regarding availability of lower transportation costs, contracting officer will not be held responsible for possessing such information where it is within bidder's control and not extrinsically verifiable.
3. Practice of bidders intentionally using guaranteed shipping dimensions which are admittedly less than actual dimensions is considered permissible alternative to reducing price for item itself, as means of meeting competition. Any possible advantage is equalized by provision in contract requiring contract price be reduced if increased costs to Government result.

Capital Industries, Inc. (Capital), has protested the rejection of its bid for refuse containers procured under invitation for bids (IFB) No. N00604-77-B-0195, issued by the Naval Supply Center, Pearl Harbor, Hawaii.

The IFB called for bids on a total of 40 refuse containers and gave each bidder the option of bidding on the bases of delivery f.o.b. origin, f.o.b. destination, or both. As provided in clause D18B(2) of the solicitation, certain named ports of loading in the continental United States were defined to be destinations within the meaning of "f.o.b. destination." However, the ultimate destination of the goods was Pearl Harbor, Hawaii. That clause also provided for the inclusion of port handling charges at the port of loading in the evaluation. Consequently, even where a bid

was based on f.o.b. destination, it was appropriate for the Navy to consider port handling and ocean charges in determining the low bidder. In this regard, it should be noted that the awardee, Parker Steel Equipment Co. Inc., (Parker), bid f.o.b. origin, Simpson, Pennsylvania, and Capital bid f.o.b. destination, port of loading, Seattle, Washington.

Essentially, Capital contends that the Navy's evaluation of transportation costs was erroneous, and had transportation costs been properly evaluated, Capital would have been the low bidder.

In evaluating shipping costs, the Navy used the Guaranteed Maximum Shipping Weights and Dimensions furnished by the bidders under clause B7a of the solicitation. These were as follows:

Bidder	max. Shpg. Weight Cntr. (lbs.)	Size in Inches (LxWxH)	Total Shpg. Wt.	Total Measurement Tons (M/T)*
Capital	1,050	80x76x64	42,000 lbs.	225
Parker	1,240	72x65x66	49,600 lbs.	179

Based upon freight rate data provided by the Military Traffic Management Command (Armed Services Procurement Regulation (ASPR) § 19-301.2 (1976 ed.)), freight costs were evaluated as follows:

Shipping Costs	Capital	Parker
Port Handling:		
Seattle, WA	\$5,463 (24.28 M/T)	
San Diego, CA		\$2,427 (13.56 M/T)
Pearl Harbor, HI	\$5,468 (24.30 M/T)	\$4,350 (24.30 M/T)
Ocean Transportation	\$7,313 (32.50 M/T)	\$5,818 (32.50 M/T)
Land Haul, Simpson, PA to San Diego, CA		\$5,922 (33.08 M/T)
TOTAL	\$18,244	\$18,517

* M/T = measurement-ton = cube divided by 40.

The total shipping costs were then added to the total bid prices to arrive at total prices as follows:

	Capital	Parker
Total bid price 40 @ \$489 =	\$19,560	40 @ \$395 = \$15,800
Total Shipping Costs	<u>18,244</u> \$37,804	<u>18,517</u> \$34,317

Capital contends that the Navy's evaluation of transportation costs was improper in that (1) the Navy erroneously used "break bulk" shipping rates as the basis for evaluation in that such mode of shipping is commercially unavailable; (2) had the Navy used the predominant mode of ocean transport, namely, "seavan" shipping, as the basis for evaluating transportation costs, Capital would have been the low bidder; (3) since Capital intended to load the seavans itself, the Navy erred in assessing its Port Handling charges amounting to \$5,463; and (4) awardee Parker understated the size of its container, resulting in substantially lower estimated shipping costs.

If, as Capital contends, break bulk shipping were indeed unavailable as a mode of ocean transportation, then the Navy's use of break bulk as the basis for evaluation would seem to violate 10 U.S.C. § 2305(c) (1970), which provides that the Government must award to the bidder whose bid is "most advantageous to the United States, price and other factors considered." However, the deficiency in this argument lies in Capital's assumption that the Government is limited only to those modes of transportation which are commercially available. The Government, like any other purchaser of goods, may elect to transport its goods to their ultimate destination itself, rather than employ another for this purpose (ASPR § 19-208.2 (1976 ed.)). Here, we find no authority which prevented the Navy from transporting the goods in its own vessels using break bulk shipping; indeed, the Navy reports that it considers the break bulk method of shipping to be more cost effective than using seavans, and for this reason the evaluation (and the resulting contract) was performed on that basis.

Following Capital's protest the Navy reevaluated bids on the bases of (1) seavan delivery-port loading by the military overseas terminal, and (2) seavan delivery-port loading by commercial carrier. The record shows that had the evaluation been based on the former, Capital would indeed have been low bidder at \$35,549; had it been based

on the latter, Lehr Associates, a third bidder, would have been low bidder at \$35,838. However, the record further shows that even the lesser of these two figures is still \$1,311 greater than Parker's evaluated break bulk cost of \$34,238. Therefore, the break bulk mode of transportation affords the Government more favorable shipping costs.

Capital further contends that the Navy erred in assessing its port handling charges. However, the Navy reports that "the first and only indication" that Capital's bid price may have included the cost of loading the refuse containers in seavans was Capital's statement to that effect in a letter to our Office dated November 29, 1977 (several weeks after award of the contract to Parker). A review of Capital's bid by this Office supports the Navy's position that it had no notice at the time of bid opening, evaluation or award that Capital intended to deliver self-loaded seavans.

In Beta Systems, Inc., B-184413, February 18, 1976, 76-1 CPD 109, we held that even where a bidder fails to provide information in its bid regarding the availability of lower transportation costs, the contracting officer will be held responsible for possessing such information if it is extrinsically verifiable and not within the bidder's control. Here, however, Capital's intent to load the seavans itself, thus saving the Government this expense, was a subjective one. It was, therefore, neither extrinsically verifiable nor without the bidder's control. Consequently, the Navy can hardly be charged with responsibility for considering this cost-saving factor.

Finally, Capital objects to the Navy's failure to explore the discrepancy between its own and Parker's Guaranteed Maximum Shipping Weights and Dimensions, where Parker's "substantially understated" container size would obviously result in higher shipping costs than those arrived at in the evaluation. However, this Office has repeatedly sanctioned the practice of bidders using guaranteed shipping dimensions which are admittedly less than the actual dimensions; we consider this a permissible alternative to reducing the price for the item itself, as a means of meeting competition. See, General Fire Extinguisher Corporation, B-186954, November 15, 1976, 76-2 CPD 413, and cases cited. As required by ASPR § 7-2003.16 (1976 ed.),

the solicitation provided in clause B7a that where:

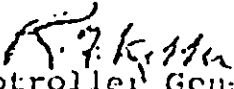
* * * * delivered supplies exceed the guaranteed maximum shipping weights or dimensions, the contract price shall be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on bidder's (or offeror's) guaranteed maximum shipping weights or dimensions and the transportation costs that should have been used for bid (or proposal) evaluation purposes based on correct shipping data."

This provision clearly equalizes any advantage that might come from understating the guaranteed shipping dimensions and insures performance at the evaluated and award price.

More generally, Capital states in its letter of protest that "it should be obvious to a qualified purchasing agent that the additional cost of shipping across the United States would be more than the \$94 difference between Capital and Parker * * *."

In view of the discounted transportation rates generally enjoyed by the Government, coupled with awardee Parker's legitimately understated shipping dimensions, this Office cannot conclude that it is self-evident that the cost of shipping the procured goods across the United States would more than compensate for the differences in price quoted by the bidders.

For the reasons stated above, the protest of Capital is denied.


Deputy Comptroller General
of the United States