



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

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B-178857

October 5, 1973

The Honorable
The Secretary of Commerce

Dear Mr. Secretary:

We refer to the report of July 20, 1973 (ADx2), from the Special Assistant for Procurement Liaison, National Oceanic and Atmospheric Administration (NOAA), concerning the protest of Motorola, Incorporated (Motorola), under invitation for bids (IFB) No. 03-3718-B-12, issued April 20, 1973, by the NOAA, Lake Survey Center, Detroit, Michigan, for a portable lake positioning system.

The IFB called for a bid on the basis of a minimum rental period of three months, with a pro-rata extension of the contract if required by the Government.

Special Provision 6 provided:

"The Government may, at any time following the acceptance of the equipment, purchase any or all items. The price the Government shall pay will be the purchase price of the equipment, such price being that paid by the Contractor's most favored customer, less 100% of the lease payment. The equipment shall be discontinued from lease on the day immediately preceding the effective date of purchase."

Item one of the bid schedule, after a brief description of the required equipment, asked for a bid on a "Lease of 3 months, extendable, with option to buy."

Bids were opened on May 11, 1973, and the only two bidders were Motorola and Del Norte Technology, Incorporated (Del Norte). On a separate equipment list, Del Norte indicated a three month rental price of \$15,144 and a purchase price for all items totaling \$59,939. Motorola's bid for item one was \$9,426 but the bid was rejected as non-responsive for failure to state a purchase price. The Del Norte bid was accepted, but exercise of the purchase option awaits disposition of the Motorola protest.

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The contracting officer believes that Motorola should have been aware from reading the invitation that a purchase price was necessary for the Government's overall evaluation. It is pointed out that the invitation included paragraph 10 of Standard Form 33-A, which provides that the award will be made "to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered."

We note that the schedule of bids contained only one item, which called for a price to be inserted in the space next to the specified quantity and unit--"3 Mos." The schedule did not specify that a purchase price be inserted and did not provide a space for the insertion of the purchase price. In fact, the option provision, quoted above, only required that the purchase price to the Government be that charged to the most favored customer, less the lease payments. Since the date of the exercise of the option is uncertain, the purchase price under the option provision could only be determined on the date the option is exercised and not at the time the bid is submitted.

Moreover, we have held that under the provisions of 41 U.S.C. 253(c) and paragraph 10, above, a formally advertised award may be made to the lowest responsive and responsible bidder based only on the items to be awarded and that option items not exercised at the time of award are not to be considered in the evaluation of bids. 50 Comp. Gen. 583, 585 (1971). Although we have recognized that under certain circumstances it may be necessary for the Government to evaluate option prices, see 49 Comp. Gen. 787, 790 (1970), we have insisted that a provision be included in the solicitation expressly advising bidders that option prices will be evaluated. 52 Comp. Gen. 614, 519 (1973). The instant invitation did not include such a provision.

We do agree with the contracting officer, however, that without inclusion of a purchase price, the bid cannot be properly evaluated. For example, Motorola's three month lease price (\$9,426) was considerably lower than Del Norte's lease price (\$15,144) for the same period. However, if Motorola's purchase price for the equipment were to exceed Del Norte's purchase price, an award to Del Norte would be more advantageous to the Government in the event the purchase option were to be exercised, since the lease payments would merely be deducted from the purchase price. Accordingly, we believe that the solicitation was defective because it did not provide for the inclusion of a purchase price and did not indicate that the purchase price would be evaluated in awarding the contract.

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Ideally, the lease should be terminated and the requirement should be resolicited. Unfortunately, a resolicitation at this time could result in the Government losing the benefit of the payments already made to the contractor under the lease. Since your agency intends to purchase this equipment, we do not believe that termination of the existing lease arrangement is a practical solution. Therefore, we do not propose to disturb the award.

However, we strongly recommend that in any future procurements, the solicitation should inform bidders of the evaluation method to be used. The basis for the evaluation of bids must be clearly and definitely stated within the solicitation in order to afford equal treatment to all bidders. 36 Comp. Gen. 380,385 (1956). When bidders are not fully aware of the evaluation criteria, the bidding process can be distorted and higher prices may result.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States