



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

B-177837

June 29, 1973

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Lieutenant General Howard W. Penney
Director, Defense Mapping Agency

Dear General Penney:

We have considered the protest of the Aircraft Company against the bid evaluation provisions of invitations Nos. DMA700-75-B-0170 and -0197 relating to the costs of travel and per diem of Government inspectors at prospective contractors' plants located outside the Metropolitan St. Louis, Missouri, area. Your Chief of Staff has submitted to our Office reports dated March 2 and April 30, 1973, justifying the use and application of these travel costs as "Foreseeable costs * * * resulting from differences in inspection * * *" (ASPR 2-407.5). Specifically, it is stated:

* * * Providing a person to perform such a function represents a real cost to the Department of Defense, both in terms of salary and travel. Since the salary of an inspector is a constant not dependent upon the location of the contractor, it is not a necessary consideration in pre-award evaluation. That cost will always be the same (once the contractor has developed the capacity to perform). However, the cost of travel is dependent upon the location of the contractor's production facility and represents a variable real cost—one that can be identified for each bidder.

The evaluation provision reads as follows:

4. OTHER EVALUATION FACTORS: One of the methods described in a. and b. below shall be used, as appropriate, to determine the amount to be used in evaluating each bid submitted by a bidder who plans contract performance outside the metropolitan St. Louis, MO area.
 - a. TRAVEL AND PER DIEM COSTS: The cost of seven (7) round trips by one NIAAC technical representative to spend a total of forty-nine (49) days at the contractor's facility to perform inspection and/or quality surveillance. Costs will be computed for travel by commercial air (tourist

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class) and per diem at the maximum daily rate allowable in accordance with the Joint Travel Regulations (JTR) in effect the date the solicitation is opened. Travel and per diem costs will apply to all contractors except those where the place of performance * * * is located in the metropolitan St. Louis, MO area. The JTR prohibits payment of travel and per diem to Government personnel who perform temporary duty within normal commuting distance of their residences.

b. **RELOCATION COSTS:** The appropriate proportion of the cost to relocate government personnel by a permanent change of station (PCS) shall be added to bids submitted under the following conditions:

(1) Where a government representative is already located at a contractor facility outside the St. Louis, MO metropolitan area for the purpose of performing similar administrative duties under one or more existing contracts with DPAAC.

(2) Where, because of the nature of the services or the item to be furnished, a full time government representative at the performance site is required and such requirement necessitates a permanent change of station.

c. If the amount computed for PCS in accordance with paragraph 5 below exceeds the cost of travel and per diem as computed in accordance with paragraph 4.a. above, the cost for travel and per diem shall be used for evaluation purposes. (Emphasis added.)

Artercraft's principal contention is that the cost of permanent change of station or per diem and travel should not be assessed against those bidders, like Artercraft, who already have a DPAAC representative in residence at their plants. We agree.

Section 2305(c) of title 10, United States Code, requires that award be made to that responsible bidder whose bid conforms to the invitation and will be most advantageous to the Government, price and "other factors" considered. We have recognized that the "other factors," mentioned in the statute and regulations, may be considered in evaluating bids if it is determined by the contracting agency that such factors are essential to the purposes of the procurement. See b-152593, December 4, 1953. However, it has been our consistent position that Government costs incident to a procurement which cannot be quantified with reasonable certainty may not be used as a factor in bid evaluation. See, e.g., b-177344, December 21, 1971.

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On the present record, we find no basis to question the inspection procedure adopted by DIA or the realism of the estimate of inspection costs that might be incurred. However, there is no basis to apply the evaluation factor to those bidders who have inspectors already stationed in their plants. Where a Government inspector is in residence, no actual cost to the Government is incurred nor can it be said at the time of evaluation of bids that any costs would, in fact, be incurred if the award were made to a prospective contractor with an inspector already in residence. Moreover, we do not think that an imputation of constructive inspection costs can be justified on the basis of equalizing a competitive advantage. If anything, the application of the evaluation formula to bidders with resident Government inspectors only enhances the competitive advantage of a bidder who will perform the contract within the St. Louis metropolitan area. Consequently, we recommend that the solicitations be appropriately modified to also provide a waiver of the evaluation formula in the case of bidders with resident inspectors.

Please advise us of the action taken on our recommendation.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

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