

DECISION

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

FILE: B-186652

DATE: September 22, 1976

MATTER OF: Chemtech Industries, Inc.

61532
97991**DIGEST:**

Notation inserted in bid by bidder that price bid is subject to any ICC freight increases rendered bid nonresponsive. ASPR § 2-404.2(d)(1) (1975 ed.).

Invitation for bids (IFB) No. DACW31-76-B-0026 was issued on April 23, 1976, by the Corps of Engineers for the procurement of 1,870 tons of hydrofluosilicic acid. Delivery was to be f.o.b. Dalecarlia Water Plant by railroad car or truck. Paragraph 22 of the Solicitation Instructions and Conditions, entitled "TYPE OF CONTRACT CONTEMPLATED," provided:

"In the event an award is made, a firm fixed-price contract will be utilized."

Bids were opened on May 26, and Chemtech Industries, Inc. (Chemtech), which bid on a railroad car delivery basis, was the apparent low bidder. Immediately beneath its bid price, Chemtech had inserted the notation: "Material Price firm, delivered. Subject to any ICC rail increases." On May 27, after being notified by the procuring activity that its bid may be considered nonresponsive because of such notation, Chemtech submitted a telegraphic modification of its bid in which it stated that its bid price would be firm, in accordance with the IFB requirements. However, Chemtech's bid was subsequently rejected as nonresponsive.

By letter dated June 2, Chemtech filed a protest with this Office against such rejection, arguing that paragraph 22 of the Solicitation Instructions and Conditions did not require bidders to submit firm fixed-price bids, but only provided that award would be on a firm fixed-price basis. Thus, Chemtech contends that its bid as submitted was responsive to the IFB, and its telegraphic modification, which essentially deleted the condition imposed by Chemtech, can be accepted.

B-186652

Armed Services Procurement Regulation (ASPR) § 2-404.2(d)(i) (1975 ed.) requires rejection of a bid as nonresponsive under the following circumstances:

"(1) where a bidder attempts to protect himself against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined * * *."

That provision, designed to prevent a bidder from attempting to impose on the Government conditions which would be prejudicial to other bidders, is clearly applicable to the present situation, since the qualifying language inserted by Chemtech in its bid envisions a possible and undetermined future change in the price bid. Accordingly, the bid was properly rejected as being nonresponsive. See Fisher-Klosterman, Inc., B-185106, March 9, 1976, 76-1 CPD 165; Joy Manufacturing Company, 54 Comp. Gen. 237 (1974), 74-2 CPD 183. In this connection, since only material available at bid opening may be considered in determining the responsiveness of a bid, Fisher-Klosterman, Inc., *supra*, the telegraphic modification submitted by Chemtech in an attempt to conform its bid to the solicitation may not properly be considered.

In view of the above, the protest is denied.

Acting


Comptroller General
of the United States