

01480

B. J. ...
Proc II.

DECISION



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

FILE: B-188845

DATE: January 26, 1977

MATTER OF: Universal Propulsion Co.

DIGEST:

1. Bid submitted with statement that unit price offered was limited to the "total quantity of 670 units" included in the IFB schedule was properly accepted, since qualification evidenced offeror's intention to submit "all or none" bid, and did not qualify Government's right to exercise option to purchase increased quantity at offered price.
2. No legal basis exists to preclude or disturb award merely because protester believes low bid is too low.

Universal Propulsion Co. (Universal), protests award to Talley Industries, Inc. (Talley), under IFB No. 0104-76-B-0870, issued by the Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania (Navy). The solicitation sought bids on a quantity of 670 Rocket Catapults, and contained an option clause permitting the Government to order up to an additional 670 units at the contract unit price.

In Universal's view, the Talley bid is nonresponsive because Talley qualified its bid by stating that: "The unit price offered is specifically limited to the total quantity of 670 units." It argues that this removes the Government's right to exercise the option. The Navy, on the other hand, argues that the qualification merely removed the Government's right to award the bidder a quantity less than 670 units but it had no effect on the option provision.

We agree with the Navy. It is clear from the language of the qualifying provision that Talley intended to preclude the Government from accepting any quantities less than the specified 670 units. In this connection, paragraph 102 of Standard

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Form 33A, which formed a part of the bid documents, gave the Government the right to make an award for less than the quantity offered at the unit prices offered unless the bidder specified otherwise in its bid. Here the bidder did otherwise specify. In effect, Talley submitted an "all or none" bid. General Fire Extinguisher Corp., B-181796, November 21, 1974, 74-2 CPD 278.

However, we think it is unreasonable to construe the qualifying language as eliminating the option provision. In B-129322, November 16, 1956, we considered a situation where, as here, the IFB called for a definite quantity (465,980 pairs of trousers) and contained an option provision for an additional quantity (232,990 pairs) which could be ordered after award. The low bidder inserted the legend "465,980 (ea) plus option-All or None." We held that the proper interpretation of the legend was that the bidder wished to indicate that it was not willing to accept less than 465,980 pairs of trousers and not that the bidder was insisting upon award of a contract for 698,970 pairs. As we subsequently explained,

"notwithstanding the use in the low bid of the phrase 'plus option' the all or none qualification was limited to the quantities definitely specified for award under the terms of the invitation for bids and did not include any quantities which * * * the Government reserved the option to award at a later time." 49 Comp. Gen. 324, at 327-28 (1969); see, also, B-172734, September 7, 1971.

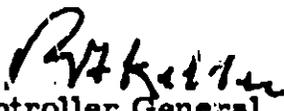
In our opinion the reasoning of the prior case applies to the circumstances of this case. The bidder merely intended to indicate that it would not accept award for less than the stated quantity of 670 units at the offered price and not that it would not accept award of any future option quantities at the offered price.

Universal also asserts that Talley's bid is "unreasonable as to price" in that it is too low. However, there is no legal basis to preclude or disturb an award merely because the low

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bidder submitted a bid which the protester believes is too low. Although the protester may view the bid as being unreasonably low, Talley was determined to be responsible by the Navy. Moreover, the Navy has advised us that Talley has confirmed its bid price as being correct.

Accordingly, Universal's protest is denied.


Deputy Comptroller General
of the United States