

JANWICELL
17075

DECISION



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

FILE: B-200692

DATE: February 19, 1981

MATTER OF: Marine Power & Equipment Co., Inc.

[Protest Alleging Awardee's Bid Was Nonresponsive]

DIGEST:

1. Discrepancy between amount bid as total price for 4-year shipbuilding contract and amount of subtotal of prices broken down for each fiscal year of contract caused by obvious error in unit prices for first 2 fiscal years may be corrected after bid opening, since mistake and intended bid are ascertainable from bid.
2. Protest concerning awardee's ability to perform contract properly is dismissed, since GAO no longer reviews affirmative determinations of responsibility except in circumstances not applicable here.

Marine Power & Equipment Co., Inc. (Marine Power), has [protested award of a contract for the construction of 12 T-AGOS Ocean Surveillance Ships to Tacoma Boatbuilding Company (Tacoma), pursuant to solicitation No. N00024-80-B-2046, issued by the Naval Sea Systems Command. Marine Power contends that because Tacoma's low bid is nonresponsive to the solicitation and Tacoma is nonresponsible, the bid should have been rejected. Marine Power makes similar charges concerning the bid of Marinette Marine Corporation (Marinette), the second-low bidder.

~~015524~~ 114389

The protest is denied in part and dismissed in part.

The invitation for bids was the second stage of a two-phase procurement, and was restricted to the four companies which had participated in the first phase of the procurement. Under the solicitation, bidders were allowed to bid unit and total prices on "Alternate A" alone or both "Alternate A" and "Alternate B." Alternate "A" provided for the construction of three ships over a 2-year period. Alternate "B" provided for the construction of 12 ships over a 4-year period. Under Alternate "B," bidders were required to break down their bids to show both unit prices and subtotals for each year of the 4-year period covered by the contract, and unit prices were required to be the same for each fiscal year. Bidders were cautioned that bids with different unit prices for partial quantities would be rejected as nonresponsive.

Bids were opened and the following total prices were received:

<u>Bidder</u>	<u>Alternate A</u>		<u>Alternate B</u>	
	<u>Unit Price</u>	<u>Total Price</u>	<u>Unit Price</u>	<u>Total Price</u>
Tacoma	\$13.8	\$ 41.5	\$ 12.2	\$146.9
Marinette	18.5	55.4	15.5	190.5
Marine Power	26.0	78.0	20.6	247.2

(All figures in millions.)

Tacoma's low bid was submitted in the following form:

<u>"Item No.</u>	<u>Supplies/Services</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
0001	Ocean Surveillance Ship (T-AGOS)				
	<u>ALTERNATE A</u>				
	For a total quantity of 3			\$13,821,697	\$ 41,465,091
	<u>ALTERNATE B</u>				
	For a total quantity of 12			12,239,090	146,869,080
	<u>FY 1979</u>				
0001	Ocean Surveillance				
AA	Ship (T-AGOS)	2	Ea.	13,821,697	27,643,394
	<u>FY 1980</u>				
0001	Ocean Surveillance				
AB	Ship (T-AGOS)	1	Ea.	13,821,697	13,821,697
	<u>FY 1981</u>				
0001	Ocean Surveillance				
AC	Ship (T-AGOS)	5	Ea.	12,239,090	61,195,450
	<u>FY 1982</u>				
0001	Ocean Surveillance				
AD	Ship (T-AGOS)	4	Ea.	12,239,090	48,956,360"

The contracting officer requested that Tacoma verify its low bid and alerted Tacoma to the possibility of an error in the Alternate "B" bid for line items 0001AA and 0001AB since those prices were identical to the unit price bid under Alternate "A." Tacoma verified its total prices for Alternate "A" (3 ships at \$13,821,697 each for a total of \$41,465,091) and Alternate "B" (12 ships at \$12,239,090 each for a total of \$146,869,080). Tacoma alleged that a mistake had been made in making entries for items 0001AA and 0001AB and requested that these entries be corrected to a unit price of \$12,239,090 and appropriate subtotal extensions. The Navy authorized correction of the bid as requested because the existence of the mistake and the intended bid are ascertainable from the invitation and the bid. Award was made to Tacoma after a finding that the firm was responsible.

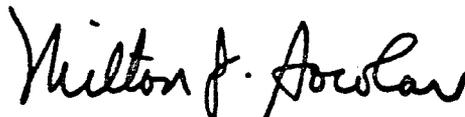
Marine Power protests the authorized correction of the Tacoma bid by contending that the bid was nonresponsive for failure to show level unit prices and the creation of a price ambiguity.

In our opinion, the contracting agency's actions were reasonable. From the face of the bid, it is obvious that the discrepancy between the total price bid for the 12 ships under Alternate "B" and the total of the prices listed for each fiscal year under Alternate "B" was caused by the erroneous insertion of Alternate "A" unit prices for the first 2 fiscal years. That this is the case is further supported by the fact that both Alternate "A" and the first 2 fiscal years of the Alternate "B" breakdown called for three ships. The intended bid price of \$12,239,090 per ship was apparent not only from the price quoted for the 12 Alternate "B" ships, but from a "Unit Price Analysis" which was submitted with Tacoma's bid as required by the solicitation. Even where, unlike here, a discrepancy exists and an ambiguity in price is created, if the bid is the low acceptable bid under either price and the bidder agrees to perform at the lower price, a contract may properly be awarded at that lower price, since the other bidders have not been prejudiced and the integrity of the competitive bidding system has not been compromised. See Fluke Trendar Corporation, B-196071, March 13, 1980, 80-1 CPD 196. Moreover, the failure to list uniform unit prices for each fiscal year under Alternate "B" did not call for a finding of nonresponsiveness because, as concluded above, the intended bid was clear on its face. Accordingly, this portion of the protest is denied.

Regarding Marine Power's argument that Tacoma will not be able to perform properly under the contract because of its obligations under numerous other contracts, such allegation involves a challenge to the contracting officer's affirmative determination of Tacoma's responsibility. Marine Power cites a number of our prior cases in which we did review affirmative determinations of responsibility. However, we discontinued the general practice of making such reviews with our decision in Central Metal Products, Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64. All of the decisions relied

upon by Marine Power predate the Central Metal Products decision. Since that decision, our Office only reviews affirmative determinations of responsibility if fraud on the part of procurement officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Z.A.N. Company, B-198985, July 3, 1980, 80-2 CPD 10. Neither exception is applicable here. Therefore, this issue is dismissed.

Marine Power's arguments that Marinette is ineligible for award are academic and will not be considered in view of our holding concerning the award to Tacoma.



For the Comptroller General
of the United States