

20114 Hordell



DECISION

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

FILE: B-204244

DATE: November 24, 1981

MATTER OF: Skip Kirchdorfer, Inc. and David Elder
Construction Company, Inc.

DIGEST:

1. Where IFB specifies that each unit price must not exceed the statutory cost limitation and protester's bid exceeds the limitation for five of the seven unit prices, bid was properly rejected as nonresponsive.
2. Where each unit bid price carries its share of costs, bid cannot be said to be unbalanced.
3. In view of the conclusion that the agency properly rejected the low bid as nonresponsive, GAO does not find that the agency acted arbitrarily or capriciously toward low bidder - claimant so as to support claim for bid preparation costs.

Skip Kirchdorfer, Inc., and David Elder Construction Company, Inc. (K-E), a joint venture, protests the rejection of its bid and subsequent award to Pearce-Trawick Contractors (P-T) pursuant to invitation for bids (IFB) No. F11602-81-B-0020 issued by the Department of the Air Force (Air Force). The IFB was for the upgrading and renovation of 112 dwelling units in 21 buildings of Wherry Housing Units located on Chanute Air Force Base.

For the reasons that follow, K-E's protest has no merit.

Each bidder was asked to submit a lump-sum bid for the 112 units and a unit cost for each of the seven unit types. This lump-sum bid was subject to modification if the Air Force decided to exercise any one or all four of the deductive bid items set forth in the IFB. In

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addition, the IFB advised the bidders that there was a statutory cost limitation (\$18,768) for any one unit. Ten bids were received by the Air Force. However, only two bidders (the second and third low) had bid within the statutory cost limitation on the seven unit types.

[K-E submitted the lowest lump-sum bid but its bid price for five of the seven unit types was \$20,000, or in excess of the statutory limitation. Under Defense Acquisition Regulation (DAR) § 18-110(c) (DAC#76-30, September 30, 1981), waiver of the statutory cost limitation is not authorized in this instance since the construction was for military family housing. Consequently, the Air Force declared K-E's bid nonresponsive.

[K-E argues that even though five of its unit prices exceeded the cost limitation this fact alone did not render its bid nonresponsive. Furthermore, K-E points out that the amount each of the five unit prices exceeded the cost limitation is negligible when viewed in light of the total cost of the services. It is K-E's position that it was unfair for the Air Force to reject its bid, which was lower than the amount of available funds in spite of the unit price problem, and at the same time accept P-T's unbalanced bid. Moreover, K-E alleges that P-T was permitted to explain the unit prices of its bid which resulted in the determination that each was under the statutory limit while K-E was denied the same opportunity. In addition, K-E requests that it be awarded bid preparation costs.

[It is clear that K-E did submit the lowest bid; however, this fact alone does not automatically mean that K-E must be awarded the contract. K-E must also be found responsible and its bid responsive. Since five of K-E's unit prices did exceed the statutory cost limitation and this limitation could not be waived, the Air Force was correct in rejecting K-E's bid pursuant to the cost limitation clause. The amount by which each unit price exceeds the cost limitation and the total bid price, by themselves or in comparison with each other, is not a factor in this instance. See Chrysler Corporation, B-188439, June 30, 1977, 77-1 CPD 466; 48 Comp. Gen. 34 (1968).

In regard to K-E's allegation that K-E should have been given an opportunity to explain its bid as was P-T, we do not agree. Initially, P-T submitted a total bid of \$2,240,000 and a unit price of \$20,000, for each of the 112 units. Prior to bid opening P-T modified its bid by reducing its total base bid by \$200,500, and increasing the amount of three of the deductive bid items.

While it is true that P-T sent a letter, after bid opening, dated July 10, 1981, to the Air Force explaining its bid and modification, we believe the letter was unnecessary and had no effect on the responsiveness of P-T's bid under the terms of the IFB. Note "3" of the Bidding Schedule reads, in part, as follows:

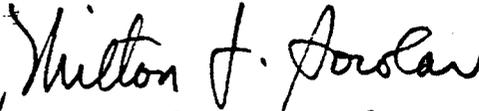
"* * * If a modification to a bid based on the unit prices is submitted, which provides for a lump sum adjustment to the total estimated cost, the application of the lump sum adjustment to each unit price in the bid schedule must be stated. If it is not stated, the bidder agrees that the lump sum adjustment shall be applied on a pro rata basis to every unit price in the bid schedule."

Since this pro rata adjustment to unit prices is the manner which P-T stated in its letter should be used to compute the modification, we find nothing improper in the handling of P-T's bid. The final unit price, following the calculations stated in note "3," was \$18,209, or under the statutory limit.

Concerning K-E's allegation that P-T's bid is unbalanced because P-T bid the same price for the different types of units, we note that the Air Force had P-T's bid reviewed by its engineers who found that its unit prices carried their share of costs. Further, upon our review of the bid abstract, two other bidders' unit prices were separated by no more than \$700 and K-E itself bid the same price for five types of the units. Therefore, we cannot say that P-T's bid was unbalanced so as to require rejection.

K-E's final request is for bid preparation costs. The standard for determining whether to allow recovery for bid preparation costs is whether the procurement agency's actions were arbitrary and capricious toward the bidder - claimant. National Construction Company, B-185148, March 23, 1976, 76-1 CPD 192; T & H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345. In view of the above, we do not find that the Air Force acted arbitrarily or capriciously toward K-E. See The George Sollett Construction Company, B-190743, September 25, 1978, 78-2 CPD 224.

Accordingly, the protest and claim are denied.

for 
Comptroller General
of the United States