

DECISION

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

FILE: B-217213

DATE: April 22, 1985

MATTER OF: Hild Floor Machine Company, Inc.

DIGEST:

1. Bid may be accepted notwithstanding IFB language stating that failure to furnish two copies of spare parts price list would render bid nonresponsive. Deficiency is not material since bidders were not required to commit themselves to specific spare parts prices.
2. Bidder's failure to submit its Employer's Identification Number and its DUNS number may be waived and is not a basis for rejection of the bid.

The Hild Floor Machine Company, Inc. protests the prospective award to the Danzig Floor Machine Corp. of a Federal Supply Schedule contract for cleaning equipment and supplies under invitation for bids (IFB) No. 9FCO-OLV-A-A1095/84 issued by the General Services Administration (GSA). Hild contends that Danzig's bid should be rejected because it did not include two copies of its spare parts price list and did not discount spare parts prices. Hild also complains that Danzig's bid did not include model numbers or evidence that Danzig's equipment conformed to fire and casualty hazard standards and omitted Danzig's Employer's Identification and DUNS numbers.

We deny the protest.

Of the 36 bids submitted, Danzig was the low bidder and Hild second low on 113 items. The two companies submitted identical bids on one item.

According to Hild, however, Danzig's bid was nonresponsive because that firm did not submit a spare parts price list and did not offer to discount spare parts prices. The solicitation provided:

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"Bidders are required to submit two (2) copies of their published spare parts price list. Failure to submit a spare parts price list with the bid will render the bid nonresponsive.

The solicitation also included the following:

"The Contractor agrees that he will bill the government for spare parts ordered during the warranty period which are not covered by the warranty at their industry-wide published list prices less _____ percent."

GSA admits that Danzig did not submit a spare parts price list with its bid. The contracting officer permitted Danzig to cure the deficiency by submitting a spare parts price list after bid opening because he determined that the omission of the list constituted a minor irregularity. GSA argues that the requirement that bidders submit a spare parts price list is not a basis for bid rejection, despite the explicit IFB warning, because spare parts pricing was not to be considered in determining the low bidder. GSA also contends that bidders were not bound by their spare parts prices but were only obligated by the IFB to assure that spare parts would be available for 7 years.^{1/} GSA construes the IFB discount clause as not requiring that bidders offer a discount on spare parts. It says an offeror's failure to fill in a discount factor simply indicates that it did not intend to offer a discount.

The test for responsiveness is whether the bid as submitted is an offer to perform, without exception, the

^{1/} The IFB provides:

"THE GOVERNMENT RESERVES THE RIGHT TO ORDER ANY NECESSARY PARTS, WHETHER OR NOT SUCH PART IS INCLUDED IN A SPARE PARTS KIT, AND THE MANUFACTURER AGREES TO HAVE ALL PARTS FOR THE ITEMS FURNISHED HEREUNDER AVAILABLE FOR A PERIOD OF 7 YEARS FROM DATE OF AWARD."

exact thing called for in the IFB, so that upon acceptance, the contractor will be bound to perform in accordance with all the terms and conditions of the IFB. 49 Comp. Gen. 553, 556 (1970); Balongas, S.A., B-215153, July 23, 1984, 84-2 CPD ¶ 86. Unless something on the face of the bid, or specifically a part of it, limits, reduces, or modifies the bidder's obligation to perform in accordance with the terms of the invitation, the bid is responsive. 49 Comp. Gen. supra. Consequently, a bid which does not conform to the requirements of a solicitation may be rejected as nonresponsive only if the deviation is material. A deviation is material if it affects price, quantity or quality; a solicitation requirement is not material simply because bidders are expressly warned that bids will be rejected should they fail to furnish information the government does not need in order to evaluate bids. Sulzer Bros., Inc., and Allis-Chalmers Corp., B-188148, Aug. 11, 1977, 77-2 CPD ¶ 112; B-175243, June 16, 1972.

We think Danzig's bid could have been rejected as nonresponsive only if the IFB required bidders to commit themselves to provide spare parts at an established price. Bell Atlanticom Systems, Inc., B-216855; B-216857; B-216858, Mar. 29, 1985, 85-1 CPD ¶ _____. Here, there was no such requirement. While it is not clear just what purpose the spare parts list requirement was intended to serve, we think it is clear that the solicitation did not seek to have bidders commit themselves to furnish spare parts at prices submitted with the bids. The spare parts requirement contains no explicit indication that bidders were expected to assume such an obligation, and we think it would be unreasonable to assume that offerors understood the IFB as requiring their agreement to fixed prices for the seven year period they may be required to furnish such parts. Moreover, the price discount provision refers to industry-wide published list prices. Such prices normally are subject to change, usually without notice, and we think the only fair reading of this provision is that the government would be billed based on prices in effect at the time spare parts are

ordered.^{2/} In the circumstances, we conclude that Danzig's omission of a spare parts price list here is not a material deviation.

Likewise, we reject Hild's contention that Danzig's bid was nonresponsive because that firm failed to insert in its bid a discount from its published spare parts prices. Since bidders were not obligated by the IFB to bind themselves to either spare parts prices or to a specific discount from whatever pricing was in effect at the time of ordering, we do not view Danzig's failure to bid a spare parts price discount as a material deviation.

With regard to Hild's argument that Danzig failed to supply model numbers, we point out that the IFB did not require that bidders furnish model numbers with their bids for any of the line items that are protested nor did the IFB require that bidders submit evidence in their bids that their equipment had been manufactured in accordance with the fire and casualty hazard standards set by a nationally recognized testing laboratory. Rather, the solicitation clause relating to fire and casualty hazards indicates that such information was to be furnished after award of a contract.

Finally, the protester argues that Danzig's bid should have been rejected because that firm omitted both its Employer's Identification Number and its DUNS (Data Universal Numbering Systems) number. The failure to complete such items, which do not relate to the bidder's contractual commitment to perform in accordance with the solicitation, may be waived or cured after bid opening. Robert McMullan & Son, Inc., B-215690, July 23, 1984, 84-2 CPD ¶ 92; Dependable Janitorial Service and Supply, B-190956, Apr. 13, 1978, 78-1 CPD ¶ 283.

^{2/} The solicitation does warn bidders that the "government reserves the right to reject" bids where the spare parts prices are considered unreasonable. Since it is clear that the prices submitted on the spare parts price list are not binding on the bidder, this "right" reserved by the solicitation cannot transform the parts list requirement into a matter of responsiveness.

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The protest is denied.

for *Seymour E. Egan*
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