

DECISION

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

1/21/90/PL-I

FILE:

B-220804

DATE:

January 24, 1986

MATTER OF:

Artisan Builders

DIGEST:

1. Although a procurement is for a nonappropriated fund activity, when it is conducted by the Air Force, a federal agency, the General Accounting Office has jurisdiction under the Competition in Contracting Act of 1984 to decide a bid protest concerning an alleged violation of the procurement statutes and regulations.
2. Bid based on a price per square foot, rather than per linear foot as required by the solicitation, is responsive when the intended price per linear foot is apparent from the face of the bid, the bid commits the contractor to perform the exact thing called for in the solicitation at a fixed price, and no other bidder is prejudiced by the agency's waiver of this defect as a minor irregularity.

Artisan Builders protests the award of a contract to Concrete Finishing, Inc., under invitation for bids (IFB) No. F02600-85-B-0044, issued August 12, 1985, by Williams Air Force Base, Arizona. Artisan believes that the Air Force should have rejected the awardee's bid for the construction of concrete paths for golf carts at the base golf course because the bid was on the basis of square feet, rather than linear feet as required by the IFB.

We deny the protest.

One of three line items in the base bid schedule called for unit and extended prices for 12,040 linear feet of concrete paths with a uniform width of 6 feet. At bid opening on September 17, Concrete Finishing was the apparent low bidder with a total base bid of \$105,948. Artisan was second low bidder at \$143,623.20.

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Initially, the contracting officer indicated to those present at the bid opening that there might be a problem with Concrete Finishing's bid because its unit price for the item in question was a price per square foot. However, upon review, the Air Force determined that bidding on a per-square-foot basis was a common industry practice and that the price per linear foot could be determined simply by multiplying Concrete Finishing's unit price per square foot by six. The contracting officer therefore found the bid responsive and awarded Concrete Finishing the contract. Artisan alleges that it was the low responsible bidder and seeks termination of the protested contract.

The threshold issue, raised by the Air Force, is whether our Office has jurisdiction to consider this protest, since the base golf course is a nonappropriated fund activity. Under section 2741 of the Competition in Contracting Act of 1984 (CICA), our Office decides bid protests concerning alleged violations of the procurement statutes and regulations by federal agencies. 31 U.S.C.A. § 3552 (West Supp. 1985). While our Bid Protest Regulations provide that we will not consider protests of procurements by nonappropriated fund activities, 4 C.F.R. § 21.3(f)(8) (1985), we have held that the authority of our Office to decide bid protests is based on whether the procurement is conducted by a federal agency and is not dependent on whether appropriated funds are involved. See T.V. Travel, Inc. et al.,--Request for Reconsideration, B-218198.6 et al., Dec. 10, 1985, 65 Comp. Gen. _____, 85-2 CPD ¶ _____. Therefore, since this procurement was conducted by the base contracting office at Williams Air Force Base and since Artisan alleges that the Air Force, a federal agency, violated the procurement statutes and regulations, we have jurisdiction.

As for the merits of the protest, we do not believe Concrete Finishing's submission of unit prices on a per-square-foot basis is fatal to its bid, since the intended price per linear foot can be determined from the face of the bid itself. First, as the Air Force indicates, given the uniform 6-foot width of the concrete path, the firm's price per square foot, \$1.45, can be converted to a price per linear foot simply by multiplying by six--for a total of \$8.70 per linear foot. The firm's extended price for the line item in question is \$104,748, which, when divided by the 12,040 linear feet specified in the IFB, yields a unit price of \$8.70. This method of calculating a bidder's intended unit price is legally permissible, and it permitted the Air Force to evaluate all bidders on a common basis. See Aqua Marine Constructors, B-212790, Oct. 20, 1983, 83-2 CPD ¶ 471.

In summary, although Concrete Finishing failed to bid in the precise manner requested by the IFB, there is no doubt that the firm has committed itself to perform the exact work required at a fixed price. See Werres Corp., B-211870, Aug. 23, 1983, 83-2 CPD ¶ 243. In our opinion, Concrete Finishing's failure to bid on a per linear foot basis is a matter of form rather than of substance, a minor irregularity that has not prejudiced the other bidders, and it therefore can be waived by the contracting agency. See Federal Acquisition Regulation, 48 C.F.R. § 14.405 (1984). Accordingly, we agree with the Air Force that the bid is responsive.

Artisan further complains that the contracting officer misled it both at the bid opening and later regarding the nonresponsiveness of Concrete Finishing's bid, preventing an earlier protest on the matter. The contracting officer denies this allegation and, since Artisan was able to file a protest in time to stop performance of the contract until our Office rendered a decision, we fail to see how the protester was prejudiced in any way, even if we assume that its allegation is correct.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel