



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: MTC Industries & Research Carmiel, Ltd.  
File: B-227163  
Date: August 18, 1987

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### DIGEST

1. A bid in which a line item price is omitted is non-responsive and must be rejected except in limited circumstances where other prices in the bid establish a consistent pattern which evidences both the existence of an error and the intended bid.
2. Bidder's consistent entry of "NSP" (not separately priced) for data items on bid does not constitute a pattern sufficient to establish that the bidder intended to bid NSP for a data item requirement added by an amendment which the bidder acknowledged but failed to price. The added item is not substantially similar to other data items, the government estimate for the added item is three times as great as the highest estimate for any of the other data items, and other bidders had widely divergent pricing patterns including one bidder which entered NSP for 23 of the data items, but which priced the remaining two data items.
3. Omission of a price entry for a material requirement which is not divisible from the remainder of the solicitation requirements may not be waived as a minor informality.

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### DECISION

MTC Industries & Research Carmiel, Ltd. protests the rejection of its low bid under invitation for bids (IFB) No. DAAB07-87-B-H028, issued by the Department of the Army, Communications and Electronics Command, Ft. Monmouth, New Jersey, for displacement gyroscopes and related data. The Army determined that MTC's bid was nonresponsive because MTC failed to enter any price for subline item (sline) 21AA, for a depot maintenance works requirement technical manual (DMWR), which was added to the IFB by amendment. We deny the protest.

The IFB was issued on February 2, 1987, calling for prices for four production lots of different quantities of gyroscopes (slins 1AA--1AD), plus 24 slins relating to various data requirements, and an additional three first article test slins. By amendment issued February 20, the Army added

a requirement for slin 21AA, consisting of the DMWR. The IFB required that the unit price/amount columns must be completed for all slins, with either "NSP" (not separately priced), no bid, or a price, and warned that failure to follow this instruction may render a bid nonresponsive. The DMWR amendment also explicitly required completion of the amount column, in addition to acknowledgment of receipt.

MTC acknowledged the February 20 amendment, but failed to place any entry in the amount line. MTC had entered prices for the four production slins and had entered NSP for the other 27 slins under the IFB. MTC's bid of \$2,482,816 was low, Fermitek Corp.'s bid of \$2,787,500 was next low, and ICSD Corp.'s bid of \$3,427,303 was third low. The Army determined that MTC's failure to enter a price for the DMWR slin required rejection of the bid as nonresponsive, and that Fermitek, a small business, was the low responsive bidder. However, Fermitek was found non-responsible by the contracting officer, and the matter has been referred to the Small Business Administration for consideration of the issuance of a certificate of competency.

MTC contends that it intended to include the DMWR at no cost, and that the omission of an NSP entry in the price line of the amendment was a mere clerical error. MTC points out that even if the government's \$47,419 estimate for slin 21AA is added to MTC's price, it would not affect the competitive standing of the bidders. MTC also asserts that its consistent entry of NSP for the other data item slins establishes a pricing pattern which, under prior decisions, requires the procuring activity to infer that MTC intended to include slin 21AA at no cost, and to correct the error. MTC further contends that the DMWR is divisible from the remainder of the IFB requirements and, therefore, since the omission is an obvious clerical error, it should be waived as either de minimis, or as a minor informality under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.405 (1986).

A bid generally must be rejected as nonresponsive if, as submitted, it does not include a price for every item requested by the IFB. Further, a nonresponsive bid may not be corrected under the mistake in bid procedures after bid opening. E.H. Morrill Co., 63 Comp. Gen. 348 (1984), 84-1 C.P.D. ¶ 508. This rule reflects the legal principle that a bidder who has failed to submit a price for an item generally cannot be said to be obligated to provide that item. United Food Services, 65 Comp. Gen. 167 (1985), 85-2 C.P.D. ¶ 727. A bidder's subsequent offer not to charge for the omitted item does not make the bid responsive. See Farrell Construction Co., 57 Comp. Gen. 597 (1978), 78-2 C.P.D. ¶ 45.

Our Office recognizes a limited exception under which a bidder may be permitted to correct an omitted price where the bid, as submitted, indicates the possibility of error, the exact nature of the error, and the intended bid price. This exception is based on the premise that, where there is a consistent pattern of pricing in the bid itself that establishes both the error and the intended price, to hold that bid nonresponsive would be to convert an obvious clerical error of omission to a matter of responsiveness. See 52 Comp. Gen. 604 (1973), in which our Office permitted correction of an option price omission where the bidder had submitted identical prices for the base quantity and three of four option quantities. However, in all of the "pattern" cases in which we have permitted the inference of an omitted price, the price was for an option quantity of an item for which a specific price for the same item was contained elsewhere on the bid, thus providing clear evidence of the price intended. See Telex Communications, Inc., et al, B-212385 et al, Jan. 30, 1984, 84-1 C.P.D. ¶ 127; Consolidated Technologies, Inc., B-205298, Apr. 23, 1982, 82-1 C.P.D. ¶ 375.

Here, there is no identical item which was priced, and the alleged pattern of pricing establishes neither the possibility of error nor the intended bid price. While MTC alleges that the other nonproduction items for which it entered NSP are similar because they are data items, there is in fact no particular similarity in either the data requirements themselves, or in the nature of the work involved in producing the various data items. Moreover, the DMWR is different and broader in scope than the other data items. This is evidenced by the fact that the various data item descriptions are dissimilar, and that the independent government cost estimate (ICE) for 16 of the other 24 data items in the original IFB was \$1000 or less, six of the remaining eight data items have an ICE between \$1,200 and \$5,120, and the remaining two data items have an ICE of \$13,580 for a provisioning parts slin, and \$15,000 for an engineering drawings and associated lists slin. By contrast, the DMWR, which was added to the IFB by amendment, has a substantially higher ICE of \$47,419.

In addition, the other seven bidders bid widely divergent combinations of prices for the various non-production slins. Three of the data items had been deleted from the IFB before bids were due. Of the remaining 25, bidders entered pricing combinations which ranged from prices for 21 slins with NSP entries for four slins, to NSP entries for 23 of the slins, including slin 21AA, with prices of \$53,865 and \$2,500 entered for two of the other data item slins. Moreover, of the seven other bidders, one did not make any entry for slin

21AA, three bidders entered NSP, and the other three entered \$14,000, \$35,690 and \$36,000 for the slin.

Based on the above, we find that while 25 slins were all referred to in the IFB under a "data item" heading, this does not establish the essential similarity of these slins. Similarly, the divergent pricing pattern suggests that the entry of NSP for a substantial number of the data item slins does not establish that a bidder would enter NSP for all of the slins. The likelihood that a bidder would enter a price for slin 21AA, despite having entered NSP for the other data item slins, is also increased by the fact that slin 21AA has an ICE three times as great as that of any of the other slins. Accordingly, it is not reasonable to infer that MTC intended to provide the DMWR at no cost from the face of its bid. See Handyman Exchange, Inc., B-224188, Jan. 7, 1987, 87-1 C.P.D. ¶ 23.

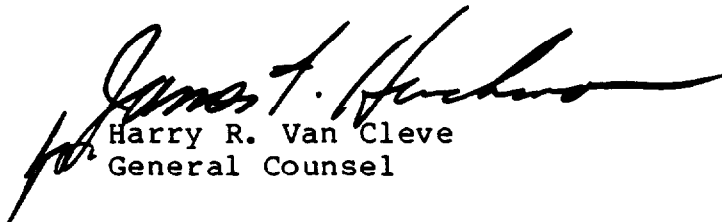
MTC next argues that the price omission should be waived because the DMWR added by amendment 1 is divisible from the solicitation, is de minimis in price, and would not affect the competitive standing of bidders. This is the standard for waiver of a bid defect which is found in Main Electric Ltd., B-224026, Nov. 3, 1986, 86-2 C.P.D. ¶ 511, which requires that all three of these elements be present in order to permit waiver. However, while MTC argues that the DMWR is divisible from the original solicitation's requirements the Army provides convincing arguments to the contrary. In particular, the agency points out that the gyroscope is defined by performance specifications without government drawings. Therefore, a contractor-provided DMWR manual is essential to permit government maintenance of the gyroscopes after delivery. Since each manufacturer makes its own version of the gyroscope unit, it is not feasible to solicit the manual separately because the manufacturer might not be willing to provide competitors with the required proprietary drawings and testing procedures necessary to produce the manual. Therefore, the Army contends that the only feasible way to obtain the DMWR is in conjunction with the production solicitation for the gyroscopes. MTC has not provided any evidence to the contrary, therefore, we must conclude that the DMWR slin is not divisible from the IFB production requirements.

Finally, MTC asserts that the defect should be waived as a minor informality under FAR, 48 C.F.R. § 14.405, which permits waiver of a defect which is merely a matter of form and not of substance, or of an immaterial defect with a negligible effect on price, quantity, quality, or delivery, that can be corrected or waived without being prejudicial to other bidders. MTC cites Leslie & Elliot Co., 64 Comp. Gen. 279 (1985), 85-1 C.P.D. ¶ 212 to support its position

that since the ICE of \$47,419 (a figure which MTC contends is inflated) is significantly less than the difference in its bid and that of the next low bidder, the defect may be waived or corrected. The Army contends that the government estimate controls, and this amount is not negligible for this procurement, within the meaning of the regulation. Id. We have indicated that no precise standard can be employed in determining whether a change required by an amendment is negligible, and the determination must be based on the facts of each case. Wirco, Inc., 65 Comp. Gen. 255 (1986), 86-1 C.P.D. ¶ 103. However, while it is not clear cut in this instance whether the amount in question is negligible in context, the price differential is not the only factor in determining materiality. Other factors such as the effect of the award on contract performance must be considered. Kinross Manufacturing Corp., 65 Comp. Gen. 160 (1985), 85-2 C.P.D. ¶ 716. Where it is apparent that a requirement is material for reasons other than the effect on price it is not necessary to determine whether or not the price impact is negligible. Main Electric Co., B-224026, Nov. 3, 1986, 86-2 C.P.D. ¶ 511.

Here, the record establishes that the DMWR requirement is an integral part of contract performance since it is a prerequisite to enable the government to perform necessary maintenance on the gyroscopes. Further, as we determined above, the requirement is not divisible from the production requirement. Since MTC failed to submit a price, it was not obligated to provide the DMWR. PNM Construction Inc., B-218643, Sept. 4, 1985, 85-2 C.P.D. ¶ 265; Dillingham Ship Repair, B-218653, Aug. 14, 1985, 85-2 C.P.D. ¶ 167. This defect materially affects the legal relationship between the parties and waiver or correction would be prejudicial to the other bidders since it would permit MTC to offer a post-opening explanation to correct its bid, which would allow MTC to decide after bids have been opened whether to accept or reject the contract. California Mobile Communications, B-225768, Apr. 13, 1987, 87-1 C.P.D. ¶ 402; Kinross Manufacturing Corp., 65 Comp. Gen. 160, supra. Accordingly, the defect is not waivable as a minor informality under FAR, 48 C.F.R. § 14.405.

The protest is denied.

  
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General Counsel