



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: International Pressure Service, Inc.

File: B-227952

Date: October 5, 1987

DIGEST

1. Where the solicitation required a bid for all items and the protester misinterpreted a parenthetical phrase advising bidders to combine the bids for two of three items and entered just one bid for all three items, leaving one item without a price, the contracting agency properly rejected the bid as nonresponsive.
2. Where bidder certifies in accordance with the Buy American Act that it intends to supply a domestic product, it is obligated to do so upon acceptance of its bid, and whether the firm in fact meets its obligation is a matter of contract administration, which the General Accounting Office does not review.
3. A nonresponsive bid may not be accepted even if it would result in savings to the government.

DECISION

International Pressure Service, Inc. (IPS), protests the rejection as nonresponsive of the low bid it submitted in response to invitation for bids (IFB) No. 3-219585, issued by the National Aeronautics and Space Administration (NASA), Lewis Research Center, Cleveland, Ohio, for the acquisition of a laboratory hot isostatic press, manuals, installation, checkout and training. IPS basically contends that it should be allowed to correct the bid because the IFB was ambiguous and misleading. IPS also complains that the specifications were based, in part, on language in the sales brochure of the awardee, ASEA Autoclave Systems, Inc.; that ASEA will not deliver a domestic end product in accordance with the Buy American Act, 41 U.S.C. § 10a-d (1982); and that the rejection of IPS's low bid will result in a waste of government funds.

We deny the protest in part and we dismiss it in part.

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The IFB stated that the contract would be awarded to the lowest responsive, responsible aggregate bidder for all items. The IFB bid schedule set forth the line items as follows:

<u>Line Item No.</u>	<u>Supplies and/or Services</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
1.	Hot Isostatic Press	1 each		
2.	Documentation	2 sets	(Price, if any, included in Item 1 above.)	
3.	Installation, checkout and training	1 each		

IPS bid \$230,000 for line item 1 and left line item 3 blank. ASEA, the only other bidder, bid \$264,000 for line item 1 and \$6,000 for line item 3.

Shortly after bid opening, IPS informed NASA that it had misinterpreted the parenthetical phrase, "price, if any, included in Item 1 above," and as a result its bid for line item 1 included its bids for line items 2 and 3. NASA, stating that only responsive bids may be corrected, denied IPS's request for correction of the alleged mistake and rejected the firm's bid as nonresponsive. In this respect, the IFB advised potential bidders that any bid that did not include a bid for all items would be rejected as nonresponsive.

IPS contends that correction of the mistake should be allowed because the bid indicates both the probability of error as well as the exact nature of the error and the amount intended. IPS maintains that the IFB's parenthetical phrase is ambiguous and can be interpreted to mean that bids for both items 2 and 3 should be included in the item 1 price. IPS argues that if the parenthetical phrase does not negate the IFB requirement for a bid for all items, then no responsive bids were submitted because neither ASEA nor IPS entered a mark (such as N/C or no charge) next to item 2.

NASA responds that the parenthetical phrase does not create an ambiguity because it appears directly across from line item 2, and can only refer to item 2 because the word "price," rather than "prices," is used. NASA also states that the line items logically correspond to the order in which events will occur during the contract. NASA states it initially will receive delivery of the hot press complete

with documentation, and that the installation, checkout and training will be performed within 40 calendar days after delivery of the press, after coordination with other installation activities. The agency reports that it provided for separate pricing of the line items to permit it to make a partial payment without requiring the contractor to wait months for payment, until the completion of training. NASA further maintains that if IPS's bid was accepted as submitted, with no bid for line item 3, the firm would not be contractually obligated to perform the work required by item 3.

To be responsive, a bid must reflect an unequivocal offer to provide the exact item or service called for in the IFB so that acceptance of the bid will bind the contractor to perform strictly in accordance with the IFB's material terms and conditions. Prosperity Dredging Co., Inc., B-225543, Mar. 30, 1987, 87-1 CPD ¶ 360. As a general rule, a bid must be rejected as nonresponsive if it is submitted without a price for every item requested by the IFB, since the government's acceptance of the bid would not legally obligate the firm to furnish the unpriced items. Record Press, Inc., B-225517, Mar. 20, 1987, 87-1 CPD ¶ 321.

There are, however, limited exceptions to the rule that a bid with a price omission is nonresponsive. One exception involves the case where the bid, as submitted, indicates that the omission was a mistake, and a consistent pricing pattern that is discernable from other prices in the bid establishes the intended price for the item. See PNM Construction, Inc., B-218643, Sept. 4, 1985, 85-2 CPD ¶ 265. Another exception is where there is some notation on the bid that clearly indicates the bidder's intent to be bound to furnish the item in question at no charge. See Record Press, Inc., B-225517, supra.

Neither exception applies here. IPS's bid, on its face, does not indicate that a mistake was made, and the protester admits that line item 3 was left blank because of the firm's interpretation of the parenthetical phrase in line 2. Therefore, IPS's bid for line item 1 is the firm's only intended bid price. Moreover, even assuming that a mistake was made, neither an intended bid price for line item 3, nor an intention to furnish the item free of charge, can be ascertained from IPS's bid package itself. Regardless of whether IPS may have intended to provide for the installation of the hot isostatic press and included that price in line item 1, a bidder's intent must be evident from the bid itself. Crystal Contracting Corp., B-223531, Oct. 16, 1986, 86-2 CPD ¶ 433. IPS's bid thus was nonresponsive and may not be corrected. Nonresponsive bids may not be corrected

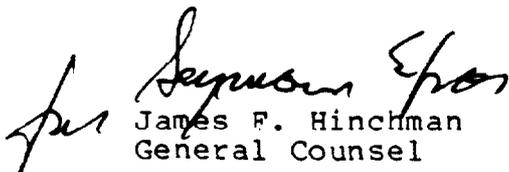
after bid opening. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-3 (1986).

Further, we do not find the IFB bid schedule ambiguous or misleading. As shown by the reproduction of the schedule set out above, there are blank spaces under the price columns only for line items 1 and 3. The parenthetical phrase is aligned with line item 2 and refers to "price" in the singular, clearly indicating that it only means the price for documentation. The parenthetical phrase in line item 2 obviously provided an exception to the IFB requirement of a bid for all items by advising bidders to include the price for documentation with the price for the hot isostatic press in line 1; ASEA's failure to price line item 2 thus is irrelevant to the bid's responsiveness. Clearly, the IFB required a bid for the other two items.

As to IPS's protest that the specifications incorporate language from ASEA's sales brochure, we dismiss that issue as untimely, because it is based upon an alleged impropriety in the solicitation that was apparent prior to the bid opening date but was not filed before that date, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987). We also dismiss IPS's contention that ASEA will not deliver a domestic press in accordance with the requirements of the Buy American Act. NASA reports that ASEA has certified that it will comply with the Act. Whether ASEA ultimately delivers a product complying with the Act is a matter of contract administration and is not for consideration under our bid protest function. Dura Electric Fluorescent Starter Division, B-225323, Mar. 2, 1987, 87-1 CPD ¶ 234.

Finally, with respect to the alleged waste of government funds, the contracting officer states that ASEA's bid, although higher than IPS's, is still a reasonable price for the items to be delivered. Moreover, we have held that a nonresponsive bid may not be accepted even if it would result in savings to the government since acceptance would compromise the integrity of the competitive bidding system. Avantek, Inc., B-219622, Aug. 8, 1985, 85-2 CPD ¶ 150.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel