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The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Microform, Inc.  
**File:** B-233045, B-233046  
**Date:** January 30, 1989

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### DIGEST

1. Bid which did not contain unit prices as required by the solicitation is responsive when the price per unit can be determined by dividing the total price for the item by the estimated quantity, because 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 the defect as a minor irregularity.
2. This Office will not review a protest against the procuring agency's affirmative determination of responsibility where there is no showing that the contracting officials acted fraudulently or in bad faith, or that the solicitation contained definitive responsibility criteria that have not been met.
3. Allegation that second low bid was nonresponsive because materially unbalanced is academic where the low bidder is eligible for the award.

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### DECISION

Microform, Inc., protests the proposed award of contracts to General Microfilm, Inc., under invitation for bids (IFB) Nos. NTSB-IFB-8902 and NTSB-IFB-89010, issued by the National Transportation Safety Board (NTSB), for clearinghouse services and micrographic services, respectively. Microform contends that Microfilm's bids are nonresponsive because they did not contain unit prices as required by the solicitations and, further, that Microfilm should be precluded from competing for the contracts because it defaulted on the previous fiscal year's contracts for the requirements and failed to return the government's property. Microform, the third low bidder under the clearinghouse services IFB, contends that the second low bid was also nonresponsive because it was materially unbalanced.

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We deny the protests in part and dismiss them in part.

The IFBs were issued on August 31, 1988, and required bidders to specify the unit price and extended price for each specific contract item. Bidders were cautioned that in the case of a discrepancy between a unit price and an extended price, the unit price would be presumed to be correct, except in the case of a correctable mistake. The IFB stated that award would be made in the aggregate on the basis of the government's estimated requirements, and that the low bidder would be determined by multiplying the unit price submitted on each item by the estimated quantity specified and by adding the resultant extensions for the option years. Prices were required to be submitted on each item and the government reserved the right to accept any item or group of items unless specifically limited by the bidder.

The IFB for micrographic services listed six items, an estimated annual volume for each item, a separate column for bidders to price fiscal years 1989, 1990, and 1991, and a column for bidders to total the cost of providing the item for 3 fiscal years. However, no specific place was designated for bidders to insert unit prices or prices for the total estimated annual volume. For example, Silver Master Fiche was estimated at an annual volume of 8,796. Therefore, the bidder was required to specify a unit price for each fiscal year for providing each microfiche, a price for each fiscal year for the total estimated annual volume, and a total price for 3 fiscal years. The IFB for clearinghouse services was structured the same as above, and listed 11 services under 8 separate major items.

Microfilm was the apparent low bidder for both IFBs, which opened on September 30, but it did not submit unit prices to reflect the price that it was charging the government to provide each service; instead, the firm inserted a total price for the total estimated amount. For example, instead of specifying a unit price, Microfilm bid \$200 for providing the total estimated volume of 200 microfiche duplicates for each fiscal year for a 3 year total of \$600. NTSB reports that the fact that the forms provided in the IFBs contained only total price columns may have caused Microfilm not to list unit prices. In any case, NTSB determined that the absence of unit prices was an immaterial deficiency that could be waived because it did not affect the price, quantity, quality, or delivery under the bid.

Microform argues that Microfilm's failure to include unit prices is a material deficiency which cannot not be waived

because these are requirements contracts and the total amounts are listed for evaluation purposes only. Microform notes that the other bidders included unit prices with their bids.

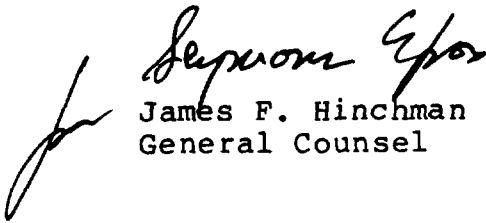
We find that Microfilm's bid is responsive and that the firm is legally bound to perform any additional agency requirements at the unit prices calculated by dividing its total prices by the estimated annual volume. The omission of unit prices does not render a bid nonresponsive when the low bid can be evaluated on a basis common to all bids; under those circumstances, the omission constitutes a minor informality that properly may be waived by the contracting officer, without prejudicing the other bidders. See GEM Engineering Company, Inc., B-231605.2, Sept. 16, 1988, 88-2 CPD ¶ 252.

Thus, even though Microfilm did not provide prices in accordance with the IFB, since the unit prices can be clearly ascertained, Microfilm has committed itself to perform the exact work required at fixed-unit prices; because this is a requirements contract, Microfilm is required to furnish whatever quantities are needed to complete the project. See GEM Engineering Company, Inc. B-231605.2, supra. Microform suggests that the ambiguity in the bidding format requires that NTSB cancel the procurement; we do not find that cancellation is appropriate, however, since the ambiguity did not prejudice Microform or result in Microfilm obtaining a competitive advantage. Engineered Air Systems, Inc., B-232237, Nov. 9, 1988, 88-2 CPD ¶ 463.

Microform also argues that Microfilm should be ineligible for the award because it defaulted on the prior fiscal year's requirement for these services and allegedly did not return the property furnished by the government. However, unsatisfactory past performance does not render a firm ineligible for future contract awards; performance history is only one of several factors an agency should take into account when considering a prospective contractor's responsibility. See Pan Am Aero, B-220486, Oct. 4, 1985, 85-2 CPD ¶ 382. Here, notwithstanding Microfilm's prior record of performance, the NTSB made an affirmative determination of the firm's responsibility. Because a determination that a bidder is capable of performing a contract is based in large measure on subjective business judgments which generally are not readily susceptible to reasoned review, our Office will not review an affirmative determination of responsibility absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were

not met. 4 C.F.R. § 21.3(m)(5) (1988). Microform's allegations do not qualify for review under this standard. Since we find Microfilm's bid was responsive, and there is no basis to question the contracting officer's affirmative determination of responsibility, the allegation regarding the second low bid under the clearinghouse services IFB is academic.

The protests are denied in part and dismissed in part.



James F. Hinchman  
General Counsel