

Wisehard



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Alaska Industrial Resources, Inc.
File: B-236043
Date: October 26, 1989

DIGEST

1. Failure to submit a unit shipping price does not render proposed awardee's low bid nonresponsive since unit shipping prices were not material to determining the total price to be paid by the agency for performance in accordance with the terms of the solicitation.
2. Protester's disagreement--based on test results--with the agency's determination that the proposed awardee's bid which included certified engineering drawings was responsive to the solicitation's technical specifications does not establish that the agency's conclusions regarding responsiveness lacked a reasonable basis.

DECISION

Alaska Industrial Resources, Inc. (AIR), protests the proposed award of a contract to Weatherhaven Resources, Inc., under invitation for bids (IFB) No. DAHA51-89-B-0003, issued by the Alaska Army National Guard for portable shelters and floor systems. The protester alleges that Weatherhaven's bid was nonresponsive.

We deny the protest.

The IFB requested unit and extended prices for three line items: 15 portable shelters, 15 flooring systems and shipping costs for the shelters and floors. The specifications provided that the shelters "must be rated and guaranteed to withstand wind loading of 70 MPH (constant) and 100 MPH (gusting)," and that they "must be rated and guaranteed to withstand snow loading of 30 lbs per sq. foot"; the specifications also required that these ratings

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and guarantees "must be provided for on stamped engineering drawings verifying these requirements." Of the four bids received, the following two were the lowest:

<u>Bidder</u>	<u>Total Price</u>
Weatherhaven	\$ 52,013
AIR	\$ 67,350

All bidders included unit and extended prices for the shelters and flooring systems as well as extended prices for shipping; however, only AIR provided a unit price for shipping. Weatherhaven's bid contained drawings prepared and stamped by a registered professional engineer which referenced the IFB's wind and snow load requirements and certified that they had been met.

The protester's first contention is that Weatherhaven's bid was nonresponsive because the firm's failure to provide a unit shipping price rendered its actual contract price indeterminable. In this regard, AIR notes that bidders were permitted to vary the delivery schedule set forth in the IFB and suggests that, in the absence of a commitment to a specific shipping price per unit, Weatherhaven's actual total contract price may vary depending upon when that firm chooses to ship the required items. The agency submits that the absence of a unit price for shipping is immaterial to establishing a firm contract price for performance in accordance with the terms of the IFB. In fact, the agency states that it had no use for a unit price for shipping the items and only included a space for unit prices because the spaces were a part of the standard form bidding schedule that it used in the IFB. The agency states that the omission of such a price at most constitutes a minor informality which can be waived pursuant to Federal Acquisition Regulation (FAR) § 14.405.

Where a requirement for the submission of unit prices is not material to establishing whether a bidder is legally obligated to perform in accordance with the terms of the IFB at a specifically determinable price, as a general matter, we have held that the omission of such prices does not render a bid nonresponsive and it may be waived as a minor informality. See Aqua Marine Constructors, B-212790, Oct. 20, 1983, 83-2 CPD ¶ 471.

Although the IFB's schedule of items provided for the line item pricing of shelters, floors and shipping, the specifications make it clear that integrated "shelter/floor system package[s]" were being procured. The IFB's delivery clause also clearly indicated that all 15 integrated packages were

to be shipped--within 30 days after award unless a bidder elected a longer period--not to exceed 60 days--in its bid. Weatherhaven proposed in its bid to ship all the units within 60 days; its total shipping price for the one-time delivery of 15 integrated packages, together with its total prices for the components comprising those packages, clearly established a contractual commitment to perform in accordance with the terms of the IFB at a readily determinable fixed price. Thus, any omission of a unit shipping price did not operate to make its bid nonresponsive. Aqua Marine Constructors, B-212790, supra.

The protester's second contention is that the shelter depicted in Weatherhaven's engineering drawings included with the bid cannot, in fact, withstand the wind and snow loads set forth in the IFB specifications. This conclusion is based on a computer simulation test commissioned by the protester which purports to indicate that parts of the shelter will fail under conditions less stringent than those described in the IFB. On the basis of this computer analysis, AIR contends that Weatherhaven's bid is nonresponsive.

The agency responded by stating that the protester has failed to demonstrate that Weatherhaven's shelter does not meet the IFB's wind and snow load specifications. In this regard, the record indicates that the agency referred the matter to an Air Force design and environmental engineer who concluded that the Weatherhaven design met the government's requirements with respect to wind and snow loads. The engineer's written opinion refers to empirical and computer modeling tests which were performed by Weatherhaven's engineer prior to certifying compliance with the specifications. Additionally, the government engineer questions whether the protester's technical conclusions--which were based on engineering drawings alone--can reasonably serve to confirm whether the specifications were met.

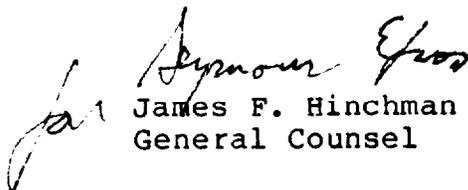
The protester argues that the engineering report provided by the government is devoid of any meaningful analysis of Weatherhaven's bid. According to AIR, the government engineer merely looked to see if the drawings were stamped and certified and provided no affirmative evidence of compliance in contrast to the allegedly detailed evidence submitted by the protester's own engineer.

The determination of whether a bidder's product meets an IFB's technical specifications is a matter primarily committed to the discretion of the contracting agency, which must bear the burden of any difficulties resulting from a defective determination; thus, we will not disturb an

agency's determination as to whether a bid is responsive to technical specifications unless the record shows that the decision lacked a reasonable basis. See James G. Biddle Co., B-196394, Feb. 13, 1980, 80-1 CPD ¶ 129. In this regard, we note that a mere technical disagreement with the agency's decision is insufficient to show that the decision lacked a reasonable basis. Id.

In our view, the record here does not show that the agency's conclusions regarding the responsiveness of Weatherhaven's bid lacked a reasonable basis since, at best, AIR has merely established that a technical disagreement exists between the protester's engineer and the government engineer who advised the contracting officer. The protester leaves unaddressed the government engineer's assertion that the results of its own computer simulation lack a sufficient basis. Moreover, we note that the computer simulation test--commissioned and relied upon by the protester--was performed using software which explicitly indicates that its author "assumes no responsibility for the accuracy, validity or applicability of the results" obtained by using the program. Weatherhaven submitted a bid which, as required by the IFB, was certified as to its accuracy by a registered professional engineer and which was later reviewed by another design engineer to determine conformance with the specifications. Under these circumstances, we are presented with no basis to disturb the agency's conclusions regarding the responsiveness of Weatherhaven's bid. See James G. Biddle, B-196394, supra.

The protest is denied.


James F. Hinchman
General Counsel