



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: New World Technology
File: B-237158
Date: January 19, 1990

DIGEST

Bidder's failure to include in its bid unit prices for subline items, as required by the solicitation, renders its bid nonresponsive because without these unit prices calculation of payment deductions for unsatisfactory performance cannot properly be made by agency, and bidder retains the opportunity to control the amount of these deductions after bid opening by allocating total prices to specific subline tasks that are subject to payment deductions.

DECISION

New World Technology (NWT) protests the rejection of its apparent low bid as nonresponsive under invitation for bids (IFB) No. DABT10-89-B-0206, issued by the Department of the Army for the maintenance, repair, and calibration of x-ray equipment at Fort Benning, Georgia. The agency rejected NWT's bid because the firm failed to include unit prices for any of the solicitation's subline items.

We deny the protest.

The IFB was issued on July 20, 1989. The bid schedule listed eight specific line items and 240 specific subline items. For each subline item, a specific task, quantity, and unit were listed. Bidders were to enter the unit price and then multiply the unit price by the quantity to arrive at the extended price for each subline item. Bidders were then to add together the amounts for the subline items to arrive at a total line item amount. Finally, bidders were to list the aggregate amount for all eight line items.

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Section M of the IFB, entitled Evaluation Factors for Award, provided that a single award of all line items would be made to the low, responsive and responsible bidder. Section M further stated that bids must include unit prices for each item listed in order for bids to be properly evaluated, and that failure to include unit prices would be cause for rejection of the entire bid. The IFB also contained a penalty provision for unsatisfactory performance by the successful contractor. The amount of money to be deducted was based on a payment deduction formula set forth in the IFB in which a percentage of the unit price, as submitted by the contractor in its bid, was to be deducted for each unsatisfactorily performed contract task.

Four bids were received by August 21, the bid opening date. NWT submitted the apparent low bid. However, NWT did not submit unit prices for any of the subline items; it simply inserted total prices for the eight individual line items and the aggregate amount for all eight line items. Because NWT did not submit unit prices in its bid, the agency could not calculate, pursuant to the formula set forth in the IFB, the amount of payment deductions it would make if NWT were awarded the contract and did not satisfactorily perform each of the contract tasks. The agency rejected NWT's bid as nonresponsive. This protest followed.

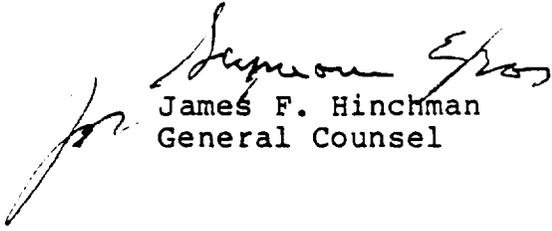
NWT argues that its failure to include unit prices for any of the subline items is a minor informality that should be waived.^{1/}

We have consistently held that the award of government contracts pursuant to the rules of sealed bidding must be made on the same terms that were offered to all bidders by the invitation. See Silvaseed Co., B-213900, May 22, 1984, 84-1 CPD ¶ 545. An irregularity in a bid resulting in benefits to a bidder not extended to all bidders by the invitation renders the bid nonresponsive. Id.

^{1/} NWT also argues that the Section M evaluation factor (requiring bids for all items) is misleading and contradictory. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989), require that a protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. This issue concerns an alleged solicitation impropriety apparent on the face of the solicitation. NWT, however, did not protest this issue to our office until after bid opening, and, accordingly, this ground of protest is untimely. See KASDT Corporation, B-235889, July 19, 1989, 89-2 CPD ¶ 63.

Here, as described in the IFB, the contractor's performance for each contract task is reviewed each month with reference to contract standards and acceptable quality levels using the government quality assurance surveillance plan. If performance for any required service is deemed unsatisfactory, and the poor performance is clearly the fault of the contractor, an amount of money is permanently deducted from the government's payment to the contractor based on the subline unit prices. By not submitting subline unit prices, NWT alone retained the opportunity after bid opening to control the payment deductions by the agency for any specific task by allocating the total line item prices to specific subline tasks as the protester determined to be in its best interest. Similarly, if the protester refuses to submit subline unit prices after bid opening, the agency could not properly apply the payment deduction formula for unsatisfactory performance, which could also benefit the protester. The IFB did not extend this opportunity or benefit to the other bidders, and therefore, NWT's bid was properly rejected as nonresponsive.

The protest is denied.



James F. Hinchman
General Counsel