

Spiegel
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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Associated Mechanical, Inc.

File: B-243892

Date: August 23, 1991

Thomas F. Dunn for the protester.
Millard F. Pippin, Department of the Air Force, for the agency.
Robert Spiegel, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DICEST

1. A bid is nonresponsive when the bid opening official is unable to determine the total bid price because of an ambiguous bid modification.
2. Mistake in bid procedures cannot be used to correct a mistake that would make a bid responsive nor can such an error be waived as a minor informality.
3. A nonresponsive bid may not be accepted even if it offers a lower price than next responsive bid, because to accept such a bid would compromise the integrity of the competitive bidding process.

DECISION

Associated Mechanical, Inc. (AMI) protests the award of a contract to any other bidder under invitation for bids (IFB) No. F17600-91-B-0002, issued by the Department of the Air Force, for the repair of a boiler in a heating plant at Loring Air Force Base, Maine. AMI argues that it was the low bidder and that the Air Force erred by rejecting its bid as nonresponsive.

We deny the protest.

On March 8, 1991, the solicitation was issued with bid opening scheduled at 3 p.m., April 9. AMI submitted the bid with the highest lump-sum price of \$700,000. That firm's bid was accompanied by a "telegram" which consisted of a facsimile message apparently hand-delivered by Western Union which included the notation: "THIS IS AN OFFICIAL TELEGRAM

TRANSMITTED BY WESTERN UNION." The message stated in pertinent part: "DEDUCT \$311,000 FROM OUR PREVIOUSLY MAILED BID TO ASCERTAIN OUR TRUE LUMP-SUM BID AMOUNT." The message did not set forth the total lump-sum bid and the contracting officer was unable to determine the bid intended by AMI, because of her uncertainty as to whether the message proposed to deduct \$311,00 from the \$700,000 price for an amended lump-sum price of \$699,689--which would make AMI the highest bidder--or to deduct \$311,000 for an amended price of \$389,000, which would make AMI the low bidder. AMI confirmed shortly after bid opening that it intended to deduct \$311,000 from its bid price, and 2 days later, on April 11, the agency received a "Western Union Mailgram," which contained substantially the same message as delivered prior to bid opening only this time it was clear that "\$311,000" was the figure to be deducted. The contracting officer determined that AMI's bid should be rejected as nonresponsive because at bid opening the message containing the modification made the bid ambiguous.

The protester argues that the modification made its bid low and that any confusion caused by the difficulty to decide whether the modification contained a comma or period before the zeros should have been dispelled "shortly after the bid opening" by the phone call and the Western Union Mailgram. The protester also argues that the defect was either an apparent clerical mistake which may be corrected or a minor irregularity which may be waived by the government; and that acceptance of its low bid would be "advantageous to the government."

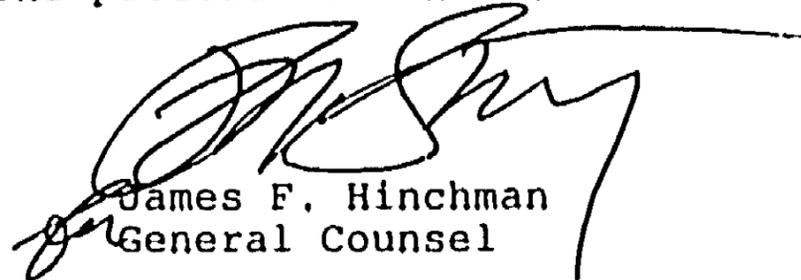
Bid responsiveness requires an unequivocal offer to provide without exception exactly what is required at a firm-fixed price. Harris Constr. Co., Inc., 64 Comp. Gen. 628 (1985), 85-1 CPD ¶ 710. A bid is nonresponsive and must be rejected if it is ambiguous as to price and it is low only under one of two reasonable interpretations. Grove Roofing, Inc., B-233747, Feb. 23, 1989, 89-1 CPD ¶ 196. Here, AMI's bid modification message that "\$311.000" should be deducted was at best ambiguous since if "\$311.00" were deducted from the firm's initial bid price it would not be the low bidder. While, on the other hand, if we assume that another reasonable interpretation is that \$311,000 is to be deducted, AMI would be the low bidder. Therefore, based upon the information available at bid opening, the bid was ambiguous as to price and it was properly rejected. Grove Roofing, Inc., B-233747, supra.

Since only information available at bid opening may be considered in making a determination of responsiveness, AMI's after bid opening phone call and the later received Western Union message cannot be considered. See B.J. Graphics, Inc., B-238194, May 1, 1990, 90-1 CPD ¶ 437. Further, the figure

contained in the bid modification could not be corrected as an apparent clerical mistake because the mistake in bid procedures cannot be used to allow a bidder to correct a mistake that would make its bid responsive. Federal Acquisition Regulation (FAR) § 14.406-3; The Ramirez Co. and Zenon Constr. Corp., B-233204, Jan. 27, 1989, 89-1 CPD ¶ 91. Nor could the error be waived as a minor informality as it impacts the responsiveness of the bid. FAR § 14.405; M.A. Barr, Inc., B-189142, Aug. 3, 1977, 77-2 CPD ¶ 77.

Finally, it would be improper for the agency to accept the nonresponsive bid even if it would result in a lower price because to do so would compromise the integrity of the competitive bidding process. Fischer-White-Rankin Contractors, Inc., B-213401, Apr. 24, 1984, 84-1 CPD ¶ 471.

The protest is denied.



James F. Hinchman
General Counsel