



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: D. H. Kim Enterprises, Inc.

File: B-261423

Date: September 21, 1995

Adam C. Harrison, Esq., for the protester.

Col. Riggs L. Wilks, Jr., Department of the Army, for the agency.

Wm. David Hasfurther, Esq., Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation required bidders to submit "[f]or the convenience of the [u]ser" prices for subdivisions of work to be performed under inclusive bid schedule line item, but where subdivisions of work were not separately listed on the bid schedule and price breakdowns were to have no effect upon contract award, a failure to submit subdivision prices with a bid for the fixed-price contract has no effect on the responsiveness of the bid.

DECISION

D. H. Kim Enterprises, Inc. protests award to any bidder other than itself under invitation for bids (IFB) No. DAHA49-95-B-0001, issued by the U.S. Property & Fiscal Office for the District of Columbia for the construction of a hangar addition to the Army Aviation Support Facility, Davison Army Airfield, Fort Belvoir, Virginia. D. H. Kim contends that it submitted the only responsive bid.

We deny the protest.

The IFB contemplated the award of a fixed-price contract. Bidders were to submit on the bid schedule form lump-sum prices for only two bid items: construction of an addition and alterations to a hangar facility at the airfield, and pavement striping (listed on the bid schedule as bid additive #1). A single award was to be made to the low, responsive bidder submitting the low aggregate total price for the bid schedule items. The IFB elsewhere required each bidder to provide a breakdown of its price for the construction line item for 12 subdivisions of work enumerated in the IFB specifications. These subdivision prices, the IFB stated, were required "[f]or the convenience of the [u]ser," and "will not affect the award of the contract" Addendum No. 2 to the specifications stated that the subdivisions

were not bid additives. Nine bids were received. Only D. H. Kim, the fourth low bidder, submitted prices in its bid for the subdivisions of work.

D. H. Kim contends that it submitted the sole responsive bid because only its bid contained prices for the subdivisions of work. The protester believes that while the IFB stated that these prices would have no effect on the award, which was to be based on the bid schedule item prices, the IFB did not state that it was permissible for a bidder to fail to include the subdivision prices with its bid. D. H. Kim argues that prices for the subdivisions were "required" by the IFB and could be necessary to the agency for analyzing the financing of the project to allow the agency to allocate the various costs of the project for accounting or budget purposes. The protester contends that the requirement for these prices was material and that the other bidders' failure to comply with the subdivision price requirement rendered their bids nonresponsive.

A bid, to be responsive, must constitute an unequivocal offer to provide the exact items or services called for in the IFB, so that government acceptance of the bid will legally bind the bidder to perform the contract in accordance with all the material terms and conditions. See Delco Indus. Textile Corp., B-223968, Oct. 29, 1986, 86-2 CPD ¶ 490. As a general rule, a bid must be rejected as nonresponsive if, as submitted, it does not include a price for every item requested by the IFB. This rule reflects the legal principle that a bidder who has failed to submit a price for an item generally cannot be said to be obligated to furnish the item. United Food Servs., 65 Comp. Gen. 167 (1985), 85-2 CPD ¶ 727.

While the protester cites various cases for the proposition that when a required price is missing from a bid, the bid is nonresponsive, see, e.g., Allbrite Office Cleaning, Inc., B-257188, June 10, 1994, 94-1 CPD ¶ 363; GTA Containers, Inc., B-249327, Nov. 3, 1992, 92-2 CPD ¶ 321; New World Technology, B-237158, Jan. 19, 1990, 90-1 CPD ¶ 77; Lioncrest, Ltd., Inc., B-221026, Feb. 6, 1986, 86-1 CPD ¶ 139, these cases deal with the failure to submit line item prices that were required on a solicitation's bid schedule form, which were determinative of which bid was the lowest priced and whether the bidder had obligated itself to perform the work required by the solicitation.¹ In the instant case, by the express terms of the IFB,

¹To the extent D. H. Kim cites our decision in Allbrite in support of its contention that the subdivision prices here are material to the calculation of contractor payments, that case is factually distinguishable. In Allbrite, we found that the protester's bid was properly rejected as nonresponsive for failure to provide numerous bid schedule line item prices that were identified by the solicitation as essential for a determination of bid responsiveness and the calculation of payments to the contractor under a requirements-type contract. Here, the bid schedule did

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the subdivision prices were to serve none of these purposes; indeed, as the IFB advised, the subdivision prices were to have no effect on the award of the contract. The subdivision prices were requested solely for information purposes "[f]or the convenience of the [u]ser" and having no bearing on any legal commitment of the bidder. In other words, a bid price for the bid schedule's inclusive construction line item legally obligated the bidder to perform the subdivisions of work--a bid's failure to contain the subdivision prices here does not mean, as the protester contends, that such a bid fails to provide an unequivocal offer to provide that work. See J&K Plumbing and Heating Co, Inc., 71 Comp. Gen. 241 (1992), 92-1 CPD ¶ 174. Accordingly, there is no basis for viewing the other bids as nonresponsive.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel

¹(...continued)

not itemize the subdivisions of work, and the IFB, which contemplated the award of a fixed-price contract, did not state (as the solicitation did in Allbrite) that payments to the contractor necessarily were to be calculated on the basis of the bid's subdivision prices or that a bidder's failure to provide such prices with its bid would render the bid nonresponsive.