

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

61225

FILE: B-184603

DATE: July 28, 1976

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MATTER OF: Rix Industries, Inc.--Reconsideration

DIGEST:

1. Protesting bidder's argument that contracting officer improperly slighted supposed IFB definition of "total price" in interpreting what bidder meant by phrase-- "deduct \$14,380 from total price"-- is based on unacceptable premise: That bidders always intend IFB meaning of words voluntarily written into bids.
2. Unless it is clear from submitted bid that bidder intended only IFB meaning of commonly used words inserted into bid, it cannot be assumed that IFB meaning was intended instead of dictionary meaning of words.
3. Dictionary definition of word "total" means "product of addition: sum"; consequently, under definition, expression "total price", as written into bid can only mean protesting bidder's aggregate price for both items rather than bidder's item price which is product of multiplication.
4. Contracting officer's use of dictionary definition of word "total" to interpret meaning of phrase "total price" which bidder inserted into bid was reasonable absent other evidence in protester's bid that company intended only supposed IFB meaning of phrase "total price."
5. Only evidence advanced by protesting bidder to support view that bidder intended only supposed IFB definition of phrase "total price" which bidder inserted into bid are IFB provisions common to all submitted bids. Provisions are evidence of definition intended by drafter of IFB only, rather than evidence of bidder's intention.

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6. Should it have been advantageous for protesting bidder to have avoided award, bidder could have alleged that phrase--"deduct \$14,380 from total price"--was meant to offer deduction from only one of two items required. Since meaning would have prevented agency from determining whether bidder's price was lowest received for item in question, award might have been avoided.

Rix Industries, Inc., requests that we reconsider our decision in Rix Industries, Inc., B-184603, March 31, 1976, 76-1 CPD 210, which denied the company's protest against a contract for compressors awarded to Worthington Compressors, Inc., under invitation for bids (IFB) No. N00104-75-B-0662.

The compressors were described in the IFB in two separate items--Nos. 0001 and 0002. As to both items "first article testing" was required in order that the Navy might have the right to test a sample of the contractor's compressors. Nevertheless, the right was reserved to waive first article testing for any qualified company under the IFB's "Waiver of First Article Testing" clause. Under this clause the Navy could waive first article testing as to one item only or to both items. The clause contained a blank line on which a qualified bidder could list its price to cover the contingency that the first article test might be waived.

Rix, Worthington, and Ingersoll Rand Corporation submitted bids under the IFB. On the blank line of the "Waiver of First Article Testing" clause in its bid Rix wrote: "deduct \$14,380.00 from total price." Worthington and Ingersoll Rand inserted specified prices for both items on the blank line of the clause in their respective bids.

The Navy's contracting officer interpreted Rix's insert to mean that Rix intended \$14,380 to be deducted only from the company's aggregate price (\$3,113,340) for the two items. Under this reading of the phrase, Rix's aggregate "first article waiver" price was not low when compared to Worthington's aggregate "waiver" price of \$2,874,135. Nor were either of Rix's individual item bids low when compared to Worthington's item bids. Ingersoll Rand's bid was the highest received. Consequently, the contracting officer awarded both items to Worthington.

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Rix immediately protested the award. Rix argued that it intended \$14,380 to be subtracted from the price for each item rather than from the aggregate price for both items. Under this view Rix, rather than Worthington, would have been the low bidder for item No. 0001. Consequently, Rix insisted that item No. 0001 should be severed from Worthington's contract and awarded to it.

Our decision of March 31 held that the phrase was reasonably susceptible to either of the opposing interpretations advanced. Since there were two items subject to first article testing, we thought it was reasonable to expect bidders to submit two prices that would prevail in the event first article testing was waived as to both items. But Rix submitted only one "total price" for the waiver contingency. Thus, the Navy was reasonably entitled, in our view, to consider Rix's "total price" statement as the company's way of bidding a price to cover the contingency that first article testing would be waived as to both items. Since "total price," in this view, was to be applied to both items it would be reasonable to subtract the \$14,380 from the combined price for both items.

We therefore concluded that the phrase used by Rix was ambiguous, that is, susceptible to two reasonable interpretations. We further concluded that the bid submitted by Rix was reasonably evaluated by the contracting officer and that the award to Worthington of both contract items was proper.

On reconsideration Rix argues that our decision is in error for finding that Navy's reading of the inserted phrase was reasonable. According to Rix, a sensible reading of the IFB shows that the words "total price" as used in the inserted phrase mean Rix's price for each item rather than its price for both items.

Rix points out that the "Waiver of First Article Testing" clause is replete with singular nouns--"First Article Testing Requirement," "requirement," "the First Article," "PRICE," "the price." The use of these singular nouns, Rix urges, led Rix to believe that the clause required a singular, nonaggregate pricing response pegged to each item. That a pricing response pegged to an individual item was required under the clause is further shown, in Rix's view, by the Navy's waiver rights

under the clause. Rix notes that the clause permits waiver of first article testing for one item or the other, or both items. Therefore, only a singular pricing response would allow the Navy to avail itself of savings in the event first article testing was waived as to one item rather than both items. Moreover, Rix argues that only a singular, item-oriented pricing response would have let the Navy properly decide the merits of awarding separate contracts for the items.

Rix also questions the reasonableness of the Navy's interpretation in light of the following additional argument:

"Where the IFB uses the terms, 'price', 'total price', 'aggregate' price and 'total', it unequivocally reveals the agency's interpretation of Rix's bid to be unreasonable:

"In Paragraph 2 of the 'Solicitation Instructions and Conditions' Form, entitled, 'Preparation of Offers' the solicitation expressly refers to 'total' price as the total price for each Item, not as the aggregate sum of the total prices of both Items. To quote from Paragraph 2:

"'(c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the Amount column of the Schedule for each Item offered.'
[Emphasis added.]

"Paragraph 13 of this same Form entitled, 'Seller's Invoices', uses the term 'totals' with the same meaning. It states:

"'* * * Invoices shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals.'
[Emphasis added.]

"In provision D-4 of the IFB's Schedule, the solicitation refers to the possibility that separate contracts might be awarded, one for Item 0001 and another for Item 0002. After describing that possibility, the solicitation refers specifically to the price term in a single contract for the supply of both Items. Its price would not be a 'total price', but an, '* * * aggregate price * * *.' [Emphasis added.]

"It is not only noteworthy that the IFB also gives those terms exactly the same meaning as did Rix. It is more noteworthy that it never uses any of them as the agency later did."

Rix's arguments about the singular noun structure of the "Waiver of First Article Testing" clause and the IFB provisions referring to "price," "total price," and "aggregate price" are linked to an underlying premise: that Rix intended "total price" to have the same meaning of the expression as used in the IFB. Assuming "total price" means item price only under the IFB, we do not agree that the contracting officer was bound to use that meaning in interpreting what Rix meant by "total price."

To conclude otherwise would require an assumption that bidders always intend the IFB meaning of word(s) inserted into bids. The assumption may be valid when there are not other commonly accepted definitions of the words in question; but when the inserted words are also words in common use having accepted dictionary definitions, the IFB meaning of the words cannot be assumed. Of course, if it is clear from the submitted bids that the bidder intended only the IFB meaning of the inserted word(s) that meaning should prevail.

The word "total" as defined in Webster's New Collegiate Dictionary (1975 ed.), means "product of addition: sum." Only Rix's aggregate price for both items is a sum; Rix's item price is a product of multiplication (number of units multiplied by unit price). Consequently, under the dictionary definition the phrase "total price" can only mean Rix's aggregate price for both items.

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The contracting officer's reliance on the dictionary definition of "total" to interpret the inserted phrase "total price" was reasonable absent other evidence in Rix's bid that the company intended only the supposed IFB meaning of "total price." The only "other evidence" advanced by Rix to support its view that the company intended the supposed IFB definition of "total price" are the IFB provisions common to all submitted bids. These provisions are evidence of the definition intended by the drafter of the IFB; they do not constitute evidence that Rix only intended the drafter's meaning when the company inserted the phrase into its bid. We therefore reject Rix's argument that the Navy's interpretation of its phrase was unreasonable.

Moreover, even if it were supposed that Rix's intention to use the assumed IFB definition of total price was clear from the face of its bid, another problem of interpretation is presented. As recently stated by the Navy's procurement agent in charge of the compressor purchase:

"As there were two items being procured, each item being subject to a first article test, I did not know whether the statement referred to the price of Item 1, the price of Item 2, or the combined prices of Items 1 and 2."

Should it have been advantageous for Rix to have avoided an award, the company could have alleged that the inserted phrase was meant to offer a deduction from one item only rather than from each item. Rix could have further argued that its failure to indicate from which item the deduction was to be made clearly prevented the Navy from determining whether its price for the item in question was the lowest received. Rix might have thus been able to avoid an award.

Therefore, we affirm our denial of Rix's protest.


Deputy Comptroller General
of the United States