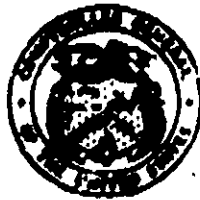


01515



Grant Volner  
Proc. II

**DECISION**

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

**FILE: B-187231**

**DATE: February 8, 1977**

**MATTER OF: General Kinetics, Inc.**

**DIGEST:**

1. Where invitation permits multiple awards and does not prohibit "all or none" bids, insertion of "INCL" and asterisks next to various schedule line items in lieu of specific unit prices may be reasonably construed as evidencing bidder's intent not to charge for those items and in effect was tantamount to an "all or none" bid for those items for which prices were quoted.
2. Notwithstanding protester's contention that IFB did not clearly state agency's requirement for line item, causing protester to submit bid based on supplying duplicate set of item where agency required only single set, award to low bidder is not subject to objection where bid prices reveal that protester would not have been low bidder in any event.

General Kinetics, Inc. (GKI) protests the proposed award of a contract to Enclosure Corporation (Enclosure) or to either of the two other lower bidders under invitation for bids (IFB) 5-87372/070, issued by the National Aeronautics and Space Administration's (NASA's) Goddard Space Flight Center, Greenbelt, Maryland. The IFB solicited bids for eight separate line items, including specified quantities of electronic equipment racks and rack consoles. Essentially, GKI contends that the three lower bids were nonresponsive for failing to provide separate unit and total prices for each of the eight line items and that award should be made to GKI as the low responsive bidder. GKI argues that the variety of bid notations utilized by the bidders in lieu of specific prices created substantial doubt as to what was being bid upon and what items the bidders would be obligated to furnish. However, for purposes of deciding GKI's protest, we need only discuss the bid submitted by Enclosure.

The IFB's "Solicitation Instructions and Conditions" called for both unit and extended (total) prices for each of the contract line items and further advised bidders that "in addition to other factors, offers will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple award) \* \* \* and individual awards will

B-187231

be for the items and combination of items which result in the lowest aggregate price to the Government \* \* \*." For this purpose, space was provided next to each of the line items for bidders to insert their proposed unit price and to enter a total price for the particular item.

In accordance with the solicitation instructions, Enclosure listed a unit price and computed its total price for contract line Items 1 and 2 (racks and rack consoles). With respect to the remaining items, Enclosure inserted the notation "INCL" in the spaces provided on the bid form for unit prices for Item 3 (manufacturing drawings), Item 4c (resistance test), Items 5, 6, and 7 (related hardware kits), and Item 8 (replacement parts list). As for the remainder of Item 4, namely 4a and 4b, the shock and vibration tests, Enclosure placed an asterisk "\*" in the spaces provided for the test's unit prices as well as directly beside the IFB's "Note" inserted in regard to those items advising bidders that shock and vibration test data on similar mechanically constructed racks could be submitted in lieu of data compiled from the actual testing of a sample rack being offered for the instant procurement.

NASA interpreted Enclosure's insertion of the notation "INCL" to mean that Enclosure intended the price of the related hardware kits, manufacturing drawings, resistance test, and replacement parts list to be included in the base price of the racks and rack consoles (Items 1 and 2). NASA states that "INCL" is a common abbreviation for the word "included", and believes its interpretation to be the only reasonable conclusion that can be reached from reading Enclosure's bid, especially in view of the direct relationship of those items to the racks and rack consoles. Similarly, it is NASA's position that the asterisks inserted in Enclosure's bid, when read in conjunction with each other and the IFB's "Note", indicate Enclosure's intent to furnish the requested shock and resistance test data from data generated by the previous testing of a similar manufactured rack in accordance with the instruction printed on the bid form and at "no charge" to the Government. NASA asserts that the election by Enclosure to compute the price of the various hardware kits, resistance tests, and parts list, into its prices for the racks and rack consoles was tantamount to its submission of an "all or none" bid, which was an acceptable method of bidding under this invitation.

GKI, on the other hand, argues that the IFB clearly required a unit price per contract line item and the absence thereof in Enclosure's bid thwarted the intent of the IFB's multiple award provision. Specifically, GKI asserts that Enclosure's intention

D-187231

of the notation "INCL" and the asterisk symbol throughout its bid in lieu of quoting distinct unit prices for each of the line items precluded NASA from properly evaluating the bid for each line item or combination of line items, thereby preventing NASA from determining which items or combinations thereof would result in the lowest aggregate price to the Government. Moreover, GKI asserts that a substantial ambiguity is created in that NASA cannot determine with any degree of certainty under which of the two items (or both) bid upon did Enclosure intend the price of the remaining items to be included or whether the notation "INCL" simply meant that the items themselves were physically included in the racks and rack consoles themselves, and therefore no bid price was necessary. GKI also states that Enclosure's "liberally sprinkled asterisks" surrounding contract line item 4, without further explanation, clouds its intent with regard to the tests covered by that item and further renders the bid ambiguous.

Furthermore, GKI notes that the specification referenced by line items 1 and 2 describes those items as physically incorporating supporting hardware kits. GKI contends that the IFB, by requesting the notation of separate unit prices for hardware kits (items 5 through 7) is in effect requiring bidders to supply an additional (duplicate) set of hardware kits along with the kits that are to be attached to the racks and rack consoles being procured as items 1 and 2. Consequently, it is GKI's position that while Enclosure would supply the hardware kits as part of its obligation to furnish the racks and rack consoles, the bidder has not indicated any intent to furnish the additional hardware kits specifically required of bidders by line items 5 through 7. Thus, GKI asserts that the Government would have no assurance that, if awarded the contract, Enclosure would contractually be bound to deliver all the equipment, specifically, the second set of hardware kits.

Addressing first the issue of Enclosure's failure to quote a separate bid price for each of the listed line items, it is our view that Enclosure's insertion of bid prices opposite the first two items accompanied by the nomenclature indicated above for the remaining line items was tantamount to an "all or none" bid. It is our opinion that NASA reasonably determined that Enclosure's insertion of the letters "INCL" in the unit price column of its bid beside line items 3 through 8 in lieu of distinct prices evidenced its intent not to separately charge the Government for those items if awarded a contract for the racks and rack consoles. We take this position on the basis that "INCL" is a common abbreviation for the word "included" and in

B-187231

view of the admitted close supporting relationship and connection of the final six line items to the equipment racks and rack consoles. NASA's interpretation of that notation in the context of the instant solicitation was reasonable.

In this regard, our Office has recognized that a bidder's intention to furnish an item at no cost to the Government may be expressed in various ways, such as the insertion in the bid schedule of the symbol "0", 40 Comp. Gen. 321 (1960), or of dashes. Dyneteria, Inc., et al., 34 Comp. Gen. 345 (1974), 74-2 CPD 260. In 48 Comp. Gen. 757 (1969), at page 762, we enunciated these guidelines for evaluating whether a bidder intends to furnish an item at no charge:

"\* \* \* First, the bidder was aware of the necessity to insert something next to the item; in other words, the bidder had not overlooked the item. Second, after considering the matter, the bidder decided not to insert a price for the item. The affirmative corollary is that the bidder obligated itself to furnish the data without cost to the Government. Therefore, where there is no explicit indication that the data was to be supplied at no cost, the bidder's intent to do so was clear and the failure to state this intent in a more positive fashion did not render the bid nonresponsive \* \* \*."

Although we have previously held, as indicated by the cases cited by GKI, that a bidder's insertion of the words "No Bid" (James W. Boyer Company, B-187539, November 17, 1976, 76-2 CPD 433), "Does Not Apply" (Ingersoll-Rand Co., B-183682, August 13, 1975, 75-2 CPD 107), or other language (Rix Industries, B-184603, March 31, 1976, 76-1 CPD 210), next to certain line items rendered the respective bids susceptible of two reasonable interpretations and thus ambiguous, despite each bidder's post-bid opening explanation or assertion that "No Charge" was intended, we are not persuaded that the import of such cases governs this particular situation. Rather, we believe that the only reasonable conclusion to be drawn is that the total price bid by Enclosure for Items 1 and 2 is intended to encompass the bid price of the remaining items.

Furthermore, we believe the same reasoning holds true for asterisks employed by Enclosure to indicate to NASA that it intended to furnish data resulting from the tests of a similar

B-1872:1

manufactured rack. While this could have been made clearer through the use of some other language or notation, the asterisks served their intended purpose of putting the Government on notice that Enclosure intended to avail itself of the opportunity provided by the IFB's "Note" to submit previous data. It certainly was within the bidder's discretion to provide the data at no additional cost to NASA and implicit in this election was the risk that such data would not meet the IFB's requirements. Thus, we believe the asterisks served their intended purpose of advising NASA of Enclosure's election to furnish data accumulated on similar racks at no charge to the Government and did not render the bid ambiguous. Moreover, since NASA has determined Enclosure's previously generated data to be satisfactory, we need not decide whether Enclosure has agreed, by its bid, to conduct shock and vibration tests to demonstrate compliance with the specifications at no cost to the Government if the prior data were not satisfactory.

Since the IFB did not preclude "all or none" bids and bidders were advised that award would be made to the bidder submitting the most advantageous bid, GKI was on notice that award might be made to a bidder submitting an "all or none" bid. Where, as here, an invitation permits multiple awards and does not prohibit "all or none" bids, an "all or none" bid lower in the aggregate than any combination of individual bids may be accepted even though a partial award could be made at a lower unit cost. General Fire Extinguisher Corporation, 54 Comp. Gen. 416, 420 (1974), 74-2 CPD 278. In view thereof, we conclude that Enclosure's failure to quote prices on all of the IFB's line items did not render its bid nonresponsive.

In regard to GKI's assertion that Enclosure's bid should nevertheless be declared nonresponsive for its failure to evidence the bidder's intent to furnish the duplicate hardware required by the IFB, we are unable to conclude from our examination of the record that a proper justification exists for either rejecting Enclosure's bid or cancelling the solicitation (as alternately requested by GKI). At the outset, we note that it's NASA's position that only one kit of each type is to be furnished with the racks and rack consoles listed as Items 1 and 2, and that the solicitation was never intended to require or solicit bids on an additional (duplicate) set of hardware kits for those items. NASA further states that separate prices were requested for each of the hardware kits--Items 5 through 7--not as a means to fulfill a separate requirement for

B-187231


another set of those kits but rather to enable the Government to determine for itself whether it would be most advantageous to make a single award for all the listed items or a series of individual awards (in accordance with the IFB's multiple award provision) for combinations thereof.

Thus, NASA feels that it was not reasonable for GKI to interpret the specifications as calling for a set of kits to be supplied with each rack and at the same time interpret the invitation schedule as calling for separate bids on a duplicate set of kits. In this connection, we note that none of the other bidders appears to have bid on furnishing a duplicate set of hardware racks.

We do think, and NASA acknowledges, "that the IFB was not structured in the best possible format." As NASA recognizes, if the IFB had listed the racks and consoles and required that the price of the accompanying kits, drawings, testing and part lists be included in the price of the items "the question encountered here would never have arisen." However, we see no compelling reason to cancel the solicitation and readvertise because GKI thought from reading the invitation that a duplicate set of kits was required. Even after deducting GKI's prices for Items 5, 6, and 7 (\$10,452.89) from its total bid of \$168,529.89 the remainder (\$158,077.00) is considerably higher than Enclosure's bid of \$141,983.80 for Items 1 and 2. It is clear, therefore, that GKI was not prejudiced in any event.

Moreover, as stated above, while the IFB indicated the possibility of more than one award, NASA's determination to award on an "all or none" basis was proper. Therefore, GKI's contention that it was prejudiced by the IFB's inclusion of the multiple award provision is equally without merit.

Accordingly, we conclude that the acceptance of Enclosure's bid is not subject to legal objection and GKI's protest is denied.

  
Deputy Comptroller General  
of the United States