

DOCUMENT RESUME

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[Rejection of Bid as Nonresponsive]. B-188456. September 12, 1977. 6 pp.

Decision re: Atlas Machine and Iron Works, Inc.; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Air Force.

Authority: A.S.P.R. 7-2003.16. 4 C.F.R. 20.10. B-186461 (1976). B-186195 (1976). B-183791 (1976).

The protester objected to the rejection of its bid as nonresponsive. The bid failed to state the mode of transportation (air and/or sea) for the items to be transported to the construction site at Government expense, so the agency was unable to conclude that the protester's total evaluated bid price was the lowest submitted and properly rejected the bid as nonresponsive. (Author/SC)

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DECISION



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

P.L. II
30MAN

FILE: B-188456

DATE: September 12, 1977

MATTER OF: Atlas Machine and Iron Works, Inc.

DIGEST:

Where bid failed to state mode of transportation (air and/or sea) for items to be transported to construction site at Government expense, agency was unable to conclude that protester's total evaluated bid price was lowest submitted and properly rejected bid.

Atlas Machine and Iron Works, Inc. (Atlas) protests the rejection of its bid as nonresponsive to Invitation for Bids No. F05604-77-09010, issued by the Department of the Air Force.

The solicitation covered structural steel construction services and the related wood fabrication, ice excavation and compaction services necessary to relocate the DEW Line Radar Site (DYE-3), located on the eastern portion of the Greenland ice cap. The low bidder was to be determined by adding each bidder's lump sum price to the cost of transportation to be provided by the Government. Transportation costs were to be computed by adding the cost of air shipments and the cost of sea shipments of materials and equipment. The solicitation was amended to state:

"This evaluation of transportation costs will be based on the bidder's response to GP 71, ASPR 7-2003.18, 'Guaranteed Maximum Shipping Weights and Dimensions.' Transportation rates on file at the date of bid opening will be used for the evaluation. In filling out the form required by GP 71, list the items to be airlifted separately from the items to be sealifted. It is sufficient for bidding purposes to only set forth the weight & dimensions of each shipping unit." (Emphasis added.)

Relying solely on the statement, "[i]t is sufficient for bidding purposes to only set forth the weight & dimensions of each shipping unit," and the fact that the format illustrated in the solicitation did not provide a space for indicating the intended method of

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shipment, Atlas listed items without indicating the mode of shipment intended. The Air Force determined that Atlas' failure to list the items to be shipped by air separately from the items to be shipped by sea made it impossible to determine Atlas' transportation costs with the degree of certainty necessary to ascertain whether its evaluated bid (lump sum bid plus transportation costs) was the lowest overall. Atlas contends that the solicitation did not unambiguously require separation of air and sea shipment and that, even if it did, Atlas' transportation costs, and hence its bid, could have been evaluated with sufficient certainty to establish it as the lowest bidder.

Concurrently with the filing of its protest here, Atlas filed suit in the United States District Court for the District of Columbia. A temporary restraining order preventing the Air Force from awarding a contract was granted on February 25, 1977 and was in effect until March 3, 1977, when Atlas' motion for a preliminary injunction was denied. The District Court has requested our Office to consider the protest of Atlas and to advise the Court of our decision in the matter. Pursuant to that request, we are filing a copy of this decision with the Court. See 4 C.F.R. § 20.10 (1976).

We have held that a bidder's failure to furnish required data does not require rejection of its bid if sufficient information has been included with the bid from which to derive the omitted data by the application of generally accepted mathematical formulas. Publication Press, Inc., B-186461, August 26, 1976, 76-2 CPD 190. Thus, in Action Manufacturing Company--Reconsideration, MBAssociates, B-186195, November 17, 1976, 76-2 CPD 424, we held that it was not improper to accept a bid which failed to indicate the required "total contract price" where that could be computed by simply adding the prices of the individual bid items. In W. A. Apple Manufacturing, Inc.--Reconsideration, B-183791, March 2, 1976, 76-1 CPD 143, we held that a bidder's failure to provide specific information relating to the computation of transportation costs did not render the bid nonresponsive where, based on information which was provided in the bid, the contracting agency could conclude with reasonable certainty that the bid was the most advantageous to the Government.

Atlas contends that the instant solicitation, as amended, sufficiently circumscribed the bidder's choice of method of shipment to permit an accurate assessment of the maximum transportation cost allocable to the items listed by weights and volumes in its bid. Atlas relies principally on three solicitation provisions:

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1. General Provision 71 (GP 71), entitled "Guaranteed Maximum Shipping Weights and Dimensions," a clause in which bidders were requested to provide, for evaluation purposes, information relating to the items to be shipped.

2. Amendment M0002, consisting of written answers to questions posed at the bidders conference, which stated in pertinent part:

"Of the 500 tons to be airlifted 255 tons will be construction material. The contractor's camp will be shipped [airlifted] up to a maximum of 245 tons. * * *"

3. Special Provision Detail Sheet 3, a bar graph entitled "Materials Schedule 1977 Construction," (Materials Schedule) which illustrates the tasks to be performed over a ten month period of 1977. This detail sheet indicates that 255 tons of girders and footings would be airlifted to the construction site to satisfy the construction schedule.

The protester contends that, in determining its evaluated bid price, the contracting officer is bound by the Materials Schedule and Amendment M0002 to compute the cost to the Government of airlifting a portion (255 tons) of the total amount of girders and footings which were listed in Atlas' bid for the purpose of guaranteeing shipping weights and dimensions. Atlas has submitted mathematical calculations to show that, under the most expensive allocation of costs consistent with air shipment of the construction materials as allegedly imposed by the Materials Schedule for 1977 construction, Atlas would remain the low bidder overall and, therefore, should have been awarded the instant contract.

In our view, Atlas' position must fail because (1) it is based on the erroneous assumption that all items which would be shipped in conformance with the Materials Schedule's performance provision were expected to be listed by weight and dimensions for purposes of evaluation and (2) it misconstrues the solicitation as precluding the shipment of more than 255 tons of construction material. We believe that the Materials Schedule does not require the contractor to airlift discernible materials. In fact, there is neither a provision to prevent bidders from assuming the cost of transportation for bid evaluation purposes nor a requirement that bidders list items which were intended to be shipped at their own expense. Based on the assumption that Atlas was bound by

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the Materials Schedule and could choose to airlift some items in accordance with the Materials Schedule at its own expense while airlifting more costly items to transport at Government expense, the Air Force has proffered a hypothetical allocation of 255 tons of the construction materials listed by Atlas which, if airlifted at Government expense, would make Atlas' total evaluated bid price higher than that of the awardee.

Furthermore, Atlas' arguments assume that air shipment of more than 255 tons of construction material at Government expense is precluded by the solicitation. In this connection, the solicitation provides that "of the 500 tons to be airlifted 255 tons will be construction material." The solicitation further states that "the contractor's camp [e. g., tools, equipment, temporary buildings] will be shipped up to a maximum of 245 tons." While we think it is clear that the Government promised to airlift, at no cost to the contractor, no more than an aggregate of 500 tons, of which no more than 245 tons could be "contractor's camp," this provision does not preclude the contractor from airlifting up to 500 tons of construction material and transporting part or all of its camp either by commercial carrier or by Government provided sea transport. Even assuming that 255 tons of the listed girders and footings must be airlifted at Government expense, as contended by Atlas, if Atlas also intended to airlift the remaining 138 tons of footings listed in its bid at Government expense and transport all other listed items by sea at Government expense, its evaluated bid would still not have been lower than that of its competitor. Consequently, the effect of Atlas' failure to identify the intended mode of shipment of the items listed in its bid was to prevent the contracting agency from computing Atlas' transportation costs with the degree of certainty necessary to determine whether its total evaluated bid price would be lower than that of its competitor.

Atlas also contends that the requirement for listing items by method of transportation was ambiguous. In this connection, the solicitation was amended to include questions and answers discussed at the bidder's conference which stated, in part:

"* * * In filling out the form required by GP 71, list the items to be airlifted separately from the items to be searifted. It is sufficient for bidding purposes to only set forth the weight & dimensions of each shipping unit."

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The protester argues that the statement "[i]t is sufficient for bidding purposes to only set forth the weight & dimensions * * *" should be construed as negating the requirement in the preceding sentence for separating items by mode of transportation. However, its position runs counter to the rule of contract interpretation requiring that all contract provisions be given effect if possible. We think it is reasonable to give effect to both sentences.

In this connection, we note that an attachment to the solicitation as initially issued provided a suggested format for complying with the provisions of the clause requiring guaranteed maximum shipping weights and dimensions. This format provided for the submission of the following information:

Item	Max. Shpg. Wt. per Ctn.: (lbs)	No. of Items per Ctnr.	Type of Ctnr. (fiber, wood, box, bbl, etc.)	Size of Ctnr (in inches) (LxWxL)	Shpg. Character (KD, Set-up, Vested, etc)
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In our opinion, the statement that only weight and dimensions be furnished was intended to indicate to bidders that the additional information indicated on the suggested format was superfluous and need not be furnished. Moreover, we note that Atlas submitted all of the information called for on the suggested format which tends to indicate that at the time it prepared its bid it did not adhere to the literal interpretation it now argues. While we find the solicitation as initially issued to be confusing because of its failure to fully integrate the guaranteed shipping weights and dimensions clause with the need in this case for additional information as to the intended mode of transportation, we believe this deficiency was substantially corrected by the statement at the bidders conference regarding the need to separate items by mode of transportation in filling out the "weights and dimensions" form. As amended, we believe the solicitation was not defective.

The protester also argued, initially, that the awardee's bid contained a similar defect in that it failed to provide dimensions for some of its shipping units. The protester suggested the Air Force's acceptance of the awardee's bid illustrates a lack of uniformity because Atlas' discrepancy was "not a great deal more flagrant * * *." The Air Force has pointed out that while the awardee, in some instances, identified the dimensions of the containers by cubic feet rather than by length, width and height,

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the Government was able to calculate accurately the transportation costs by reference to the mode of transportation, volumes and weights furnished with the winning bid. The protester has not rebutted this position and we have no reason to disagree with the Air Force in this regard.

Atlas also has protested other factors which do not relate to the infirmity in Atlas' bid which caused its rejection. Under the circumstances, those issues are academic and would not be appropriate for consideration at this time.

Accordingly, the protest is denied.

W. H. K. 1/14
Deputy Comptroller General
of the United States