

DOCUMENT RESUME

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[Protest against Rejection of Bid as Nonresponsive in Two-Step Procurement]. B-192960. December 14, 1978. 5 pp.

Decision re: International Signal and Control Corp.; Honeywell, Inc.; by Robert F. Keller, Deputy Comptroller General.

**Contact: Office of the General Counsel: Procurement Law II.
Organization Concerned: Department of the Navy: Naval Sea
Systems Command.**

**Authority: 52 Comp. Gen. 604. B-190878 (1978). B-167795 (1977).
B-189661 (1978).**

Two companies protested an award to any other bidder in the second step of a two-step procurement. Although one of the protesters was the low bidder in step 2, its bid was rejected as nonresponsive because it did not include bid prices for optional services. Since the price for the items bid established a clear pattern of uniform pricing and the protester had submitted a responsive bid in step 1, the protest by the first protester was sustained. It was not necessary to consider the second protester's arguments; that protest was denied. (BRS)

DECISION

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

8618

FILE: B-192960 DATE: December 14, 1978

MATTER OF: International Signal and Control
Corporation; Honeywell, Inc.

DIGEST:

A bid in which prices are omitted is non-responsive and must be rejected except in limited circumstances where from other prices in the bid a consistent pricing pattern is discernable that establishes evidence of error and the intended bid. Where prices bid for basic items and certain identical option items are the same, clear pattern of uniform pricing is established so that existence of error and amount of intended bid can be determined.

International Signal and Control Corporation (International) and Honeywell, Inc. (Honeywell) each protest an award to any bidder other than itself under solicitation No. N00024-78-B-6268, issued by the Naval Sea Systems Command (NAVSEA). The solicitation is the second step of a two-step formally advertised acquisition for the purchase of portable electronic module testers together with design and field engineering services. Although International was the low bidder in Step 2, its bid was rejected as nonresponsive because it did not include bid prices for optional engineering services.

The facts in this case are not in dispute. After receipt and evaluation of the Step 1 technical proposals, NAVSEA sent Step 2 of the solicitation, dated September 11, 1978, to all firms that had submitted acceptable technical proposals. Bids were opened on September 18, 1978, with International and Honeywell being the low and second low bidder, respectively. (International's bid was approximately \$280,000 lower than Honeywell's).

International's bid, in pertinent part, is summarized below:

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE</u>
1,2,11*,12*	Standard Electronic Module Tester	\$36,636
3,4	Design Engineering Services	\$65/8 hr. man-day
5,6	Field Engineering Services	\$65/8 hr. man-day
7 703	Support for items 3,5 Overtime Excess of 8 hr./day Monday thru Friday Saturday Sunday & holidays	\$12.50/hr. \$12.50/hr. \$16.50/hr.
8 803	Support for items 4,6 Overtime Excess of 8 hr./day Saturdays Sunday & holidays	\$12.50/hr. \$12.50/hr. \$16.50/hr.
13*,14*	Design Engineering Services	\$___/8 hr. man-day**
15*,16*	Field Engineering Services	\$___/8 hr. man-day**
17* 1703	Support for items 13,15 Overtime Excess of 8 hr/day Saturdays Sunday & holidays	\$12.50/hr. \$12.50/hr. \$16.50/hr
18* 1803	Support for items 14,16 Overtime Excess of 8 hr/day Saturdays Sunday & holidays	\$12.50/hr. \$12.50/hr. \$16.50/hr.

NOTE: Identical item descriptions (items 1,2,11, & 12 for example) were separated into distinct line items for appropriation purposes.

- *Items 11 through 18 are option items
- **Items 13,14,15 & 16 were left blank in the International bid.

As its basis for protest, International asserts that its bid is responsive, notwithstanding the absence of prices for the four engineering option items, because the omission of prices was a clerical error that can be corrected prior to award on the grounds that there is a consistency in the pricing pattern of the bidding documents that establishes the probability of error, the exact nature of the error, and the bid amount actually intended. In the alternative, International claims that no evaluation of the four option items was required by the terms of the solicitation. Honeywell's protest is simply that International's bid is nonresponsive because it failed to bid on the four optional engineering service items.

As a general rule we have held that a bid is non-responsive on its face for failure to include a price on every item as required by the solicitation and may not be corrected. This rule is applicable to option items that are to be evaluated at the time of award. Ainslie Corporation, B-190878, May 4, 1973, 78-1 CPD 340. This Office, however, recognizes an exception to the general rule in circumstances where the bid as submitted indicates not only the possibility of error but also the exact nature of the error and the amount involved. The exception is based on the premise that where the consistency of the pricing pattern on the bid establishes the error and the price, to hold that bid nonresponsive would be to convert an obvious clerical error of omission to a matter of responsiveness. 52 Comp. Gen. 604 (1973).

For example, in Con-Chen Enterprises, B-187795, October 12, 1977, 77-2 CPD 284, (a contract involving refuse collection and disposal services), we permitted correction of pricing omissions in the first option year because the bidder had inserted prices identical

to the basic contract period for the second option year. We found that the services required and the terminology used in the solicitation to describe the basic contract period and those of the first and second option periods were identical and concluded that the prices bid provided clear evidence of a pattern of consistent pricing. Similarly, in 52 Comp. Gen. 604, supra, we permitted correction of pricing omissions on the consistent pricing theory where the bidder had submitted identical prices for the initial order quantity, and for follow-on increments of 1-5 units, 6-15 units, and 26-35 units, but failed to include a bid price for the quantity increment of 16-25 units. However, in Ainslie, supra, prices for all option quantities were omitted so that we did not believe the exception applied because there was no evidence of a bidding pattern established for the option quantities.

The distinction between Ainslie and the former two cases is that in the former we could see a direct relationship between the option items bid and other similarly described option items for which price was omitted, whereas in Ainslie no similar relationship exists because no option prices were bid. Consequently, in Ainslie we could not discern whether the bidder might have intended to bid more for the option items than for the same basic items. Moreover, in Ainslie, it was not clear from the face of the bid that the bidder intended to bid the option quantities at all.

Here, we are satisfied that International did intend to bid on the omitted option quantities, because the probability of the error and the exact amount of omitted items is in our opinion clearly discernable from International's bid documents.

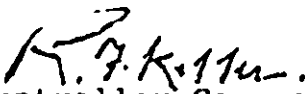
An analysis of the International bid shows that to the extent option items are priced, they are identical in price to each respective basic priced item. For example, with respect to the hardware being purchased (items 1 and 2) and the corresponding option items (11 and 12), the option prices bid were identical to the basic items.

In addition, International bid the rate of \$12.50 for weekly overtime hours and \$16.50 per overtime hour for Sunday and Holiday work option (option items 1703 and 1803), which are exactly the rates bid in the basic items (703 and 803). We believe it is not rational to conclude that a bidder would bid on overtime without an intention to perform the basic straight-time work, and that there is an obvious relationship between the basic straight-time and overtime work and the identical work specified as an option. We therefore believe that from the face of the bid a clear pattern of uniform pricing can be established. Thus, in our view, the only reasonable interpretation is that the omitted price for optional straight-time engineering hours for items 13-16 against an overtime rate of \$12.50 per hour is the same as the straight-time rate for items 3-5 against their overtime rate of \$12.50 or \$65.00 per eight hour man-day.

Moreover, there is a presumption that a bid in a two-step procurement is responsive on the theory that a bidder whose step-one proposal has been found acceptable is not likely to disqualify its step-two bid by departing from its proposal or the requirements of the specifications. Access Industries B-189661, July 11, 1978, 78-1 CPD 100. In this respect, the step-one solicitation required offerors to provide the four optional engineering items concerned; and it is reasonable to believe International, having qualified itself to bid on the second step, would not knowingly act to render its technically acceptable first-step offer nonresponsive in the second step by failing to obligate itself to perform these services in the event the Government exercised the option. Correction of the bid should therefore be permitted by inserting this \$65.00 man-day rate for items 13-16.

In view of the above, it is not necessary to consider International's alternative argument.

The International protest is sustained and the Honeywell protest is denied.


Deputy Comptroller General
of the United States