



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

~~40294~~

B-179601

December 20, 1973

C 459
A. C. Ball Company
1697 Industrial Road
San Carlos, California 94070

Attention: Mr. Richard B. Metz " Assistant Treasurer

Gentlemen:

A 326

We refer to your letter dated August 27, 1973, protesting against the proposed award of a contract to any other bidder under invitation for bids (IFB) No. N00191-73-R-0053, issued by the Charleston Naval Shipyard, Charleston, South Carolina.

The IFB Schedule appeared as follows upon a Standard Form 36 Continuation Sheet:

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
PART II - THE SCHEDULE					

SECTION E - SUPPLIES/SERVICES AND PRICES

LOT I

0001. 11 FSN None Total Item Quantity 11 EA

Wherry Boat Winch

REQ: N00191-3096-60001

0002. 11 FSN None Total Item Quantity 11 SE

Repair parts and special tools
for Item 0001

REQ: N00191-3096-60002

0003. Contract Data Requirements -
See DD Form 1423, Exhibit A.

[Protest of Proposed Award]

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The vertical columns shown in the heading were not extended downward on the page through part II, section E. However, to the right of items 0001, 0002 and 0003, directly beneath the "Unit Price" heading, you inserted "7,875.00", "4,500.00" and "13,750.00 TOTAL FROM DD1423" respectively. After bid opening, a dispute arose between you and the procuring activity concerning the meaning of item 0002. You maintain that you had interpreted item 0002 to solicit bids for one lot or "set" of repair parts and special tooling "for item 0001", i.e., 11 winches. Therefore, you state, your bid price of \$4,500 under item 0002 was intended to cover the total solicitation requirements for repair parts and special tools for all 11 winches.

The procuring activity, on the other hand, advised you that item 0002 requested bids upon 11 sets of repair parts and special tools, each set to support one of the 11 winches being procured under item 0001. The procuring activity evaluated your entry of "4,500.00", which appeared beneath the "Unit Price" heading, as offering 11 sets of repair parts and special tools at \$4,500 per set, for a total of \$49,500 under item 0002.

You regard your firm as the low bidder and under the Navy's evaluation another firm is the low bidder. It is your position that the solicitation was ambiguous and misled your firm to its prejudice, and that in the absence of an award to your firm, the solicitation should be canceled and the requirement readvertised.

Item 0002 requested bids upon:

"11 FSN None Total Item Quantity 11 SE
 Repair parts and special tools
 for item 0001"

The description of the supplies is preceded by the number "11" and the "Total Item Quantity" is given as "11 SE [sets]." Even though the unit for item 0002 might have been described as "EA" (each) rather than "SE" (set), it seems clear that the total procurement under the item was divided into 11 equal parts, paralleling item 0001 and suggesting the same kind of treatment. If the total item 0002 was to be regarded as a single package, we see no purpose in including the 11 under "Quantity" since the total called for was already sufficiently described under "Supplies/Services." Therefore, we do not find the solicitation ambiguous in this regard.

The contracting officer initially responded to your protest by advising you of the procedures set forth in the Armed Services Procurement Regulation (ASPR) for correction of mistakes in bid. You informed the contracting officer that you did not regard your firm as having made a mistake; you considered the error to be the procuring activity's interpretation of your bid. However, you offered to produce your original worksheet and a sworn statement of your firm's president, who signed your bid, that your intended price for the total requirement under item 0002 was \$4,500. The procuring activity did not further develop your protest as a request for correction of a mistake in bid, deeming it instead on the basis that the terms of the IFB were unambiguous and your entry of "4,500.00" was properly evaluated as a unit price.

It is significant to note that for item 0001, your bid indicated a price of \$7,875. This figure, which admittedly represents a price per unit, was inserted approximately under the "Unit Price" heading. The \$4,500 figure in your bid for item 0002 was inserted directly beneath your unit price for item 0001. If you intended \$4,500 as the total price for item 0002, we believe the figure should have been inserted to the far right of the space, approximately under the "Amount" heading. Placing the price figures in the same column made it reasonable to assume that they were intended to have parallel application. Therefore, we cannot find fault with the conclusion reached by the contracting officer.

You also contend that a unit price of \$4,500 for repair parts and special tooling (item 0002) is so grossly excessive that it "could not possibly be an indication of our reasonable intentions." We recognize that under the agency's evaluation, your total price for item 0002 would be the product of \$4,500 times 11, or \$49,500, while the other two bidders submitted unit prices of \$100 and \$850 under item 0002, which when extended totaled \$1,100 and \$9,350, respectively.

We note that Provision C58 of the IFB stated: "Award will be made to a single offeror on each entire lot." The IFB expressly defined "Lot I" as being comprised of items 0001, 0002 and 0003. Since award was to be made to only one bidder on the basis of the lowest price for all three items as a whole, there was substantial flexibility in the bidders as to the allocation of their total prices among the three items. For example, we note that while your price for item 0003 (contract data) was \$13,750, the two other bidders did not separately price this item.

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On a lot basis, as evaluated by the agency, your total bid was \$148,376.25, while the other bid prices were \$136,300.39 and \$172,496. Your total price would be only \$103,726.25 (after discount) if evaluated on the basis for which you contend. We cannot say that your alleged price of \$103,726.25 is more reasonable in relation to the other bids than the agency's evaluated price of \$148,376.25.

In view of the foregoing, we must conclude that your bid was properly evaluated by the agency. Therefore, your protest is denied. In reaching this conclusion we do not question that your intentions were in accordance with your subsequent explanations. However, the integrity of the competitive process requires that bids be interpreted as submitted without post-opening explanations from bidders.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States