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**DECISION**



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

*[Protest Against Bid Rejection as Nonresponsive]*

FILE: B-198240

DATE: July 25, 1980

**MATTER OF** National Radio Company, Inc.;  
Bruno-New York Industries Corp.

**DIGEST:**

Where only difference between basic and alternate bids is that former includes first article requirements whereas latter does not, failure to submit separate prices for first article requirements may be waived as mere informality, since difference in price between basic and alternate bids is obviously amount of cost of first article requirements.

National Radio Company, Inc. (National), protests that its low bid submitted under invitation for bids (IFB) No. DAAB07-80-B-1079 issued by the Department of the Army for 1,726 control communication systems should not have been rejected as nonresponsive. Bruno-New York Industries Corp. (Bruno) protests the proposed award to Andrea Radio Corporation (Andrea), the second low bidder, on the basis that Andrea's bid was nonresponsive.

We find merit in National's protest and it is, therefore, sustained.

The National bid did not provide any information entitling National to waiver of first article testing requirements. National's bid was rejected because it did not furnish prices for the first article requirements (units, test procedure, test and test report).

National contends that the bid should not have been rejected because the IFB solicited bids on a "Basic offer including first article" basis and on

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an "Alternate offer based on waiver of first article" basis, that it bid \$154 per unit on the former basis and \$149 per unit on the latter basis and that the difference in unit prices is due to the fact that there is a first article requirement for the former basis and none for the latter basis. In that connection, National states that, rather than providing separate prices for each of the first article requirements, it spread the costs of the first article requirements over the number of units to be procured so that it would be readily apparent as to the effect the first article requirements have upon the unit price.

National states that it was led to believe that this was the proper way to bid because the IFB solicited a "Basic offer including first article," two "First Article/Waiver of First Article" clauses were interpreted to mean that separate prices for the first article requirements were important only if an "Alternate offer based on waiver of first article" was not bid and the footnote in the total item amount blocks for the first article requirements indicated that the information was only to determine progress payments following award and not to determine responsiveness.

The Army contends that National's bid was nonresponsive because the IFB required bidders to complete the first article requirements blocks which National left blank. In this connection, the Army points out that IFB paragraph C.83.1 admonished bidders against leaving the first article portion of the bid blank and states that "Failure to follow this instruction will render the bid nonresponsive." In addition, the Army asserts that since National failed to either complete the first article requirements blocks or provide any statement in the bid obligating itself to perform the first article requirements, National cannot be said to be obligated to perform that service as part of the service for which prices were submitted.

We have held on numerous occasions that the test to be applied in determining the responsiveness

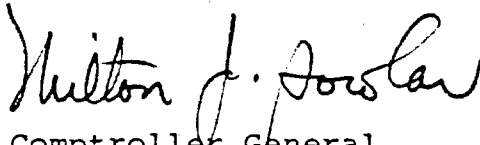
of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof. 49 Comp. Gen. 553 (1970). Unless something on the face of the bid, or specifically a part thereof, either limits, reduces or modifies the obligation of the prospective contractor to perform in accordance with the terms of the invitation, it is responsive. 48 Comp. Gen. 685 (1969); B-160318, February 16, 1967.

Failure to provide certain information in the bid specifically required by the solicitation will not necessarily affect the responsiveness of a bid since it may not limit, reduce or modify a bidder's obligation to perform in accordance with the terms of this solicitation. See 39 Comp. Gen. 595 (1960). A bidder's commitment to perform in accordance with an invitation need not always be made in the manner specified by the solicitation; all that is necessary is that the bidder, in some fashion, commit itself to the solicitation's material requirements. Fisher Berkeley Corporation; International Medical Industries, B-196432, B-196432.2, January 9, 1980, 80-1 CPD 26. If the purpose for requiring this information is clear and appears to be substantially met by the material furnished, we do not believe that the interests of the Government or of the competing bidders require that a bid be rejected because of deficiencies merely of form. 39 Comp. Gen. 595, supra.

We therefore must consider whether the purpose for requiring completion of the first article blocks in the instant solicitation was met by the information provided in National's bid. The purpose of the first article blocks in the invitation was obviously to determine the costs of the first article requirements. We believe that National's submission of both a basic and an alternate offer clearly provided the Army with this information and, thus, indicated National's intention to be obligated to perform this requirement.

The only difference between the IFB's basic and alternate offers was that the former included first article testing requirements, whereas the latter was based on the waiver of these requirements. Thus, the difference between National's \$154 and \$149 unit prices can only be due to the fact that the \$154 unit price takes into consideration and is an offer to provide the first article requirements. The total price of National's first article requirements is obviously the difference in the total prices of the two bids submitted by National. The bid is thus responsive since it clearly indicates not only National's intent to be bound to perform the first article requirements, but also reveals the exact price of these requirements. Therefore, we find that National's failure to complete the first article requirements blocks was a mere informality which may be waived.

Since we find National's bid to be responsive, we need not consider Bruno's protest that Andrea's bid was nonresponsive.



For the Comptroller General  
of the United States