

PLI 14794



**DECISION**

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

FILE: B-198240

DATE: September 2, 1980

MATTER OF: Andrea Radio Corporation

**DIGEST:**

Prior decision--holding that agency should not have rejected low bid as nonresponsive for failure to insert subline item (first article testing) prices because bid clearly indicated what such prices were and that such prices were included in price of basic item--is affirmed since it has not been shown to be erroneous.

Andrea Radio Corporation (Andrea) requests reconsideration of our decision in the matter of National Radio Company, Inc.; Bruno-New York Industries Corp., B-198240, July 25, 1980, 80-2 CPD . That decision concluded that National Radio Company, Inc.'s (National), bid submitted in response to invitation for bids (IFB) No. DAAB07-80-B-1079 issued by the Army should not have been rejected as nonresponsive.

The July 25, 1980, decision notes that the Army rejected National's low bid because National did not provide separate prices for first article testing (including the units, the test procedure, the test and the test report). The Army argued, as Andrea vigorously contends here, that the IFB warned National that the failure to provide such prices would render a bid non-responsive and that since National did not provide a statement with its bid obligating it to perform the first article testing, National would not be obligated to perform the tests. As support, the Army relied, as Andrea does now, on our decisions in Radalab, Inc., B-188331, July 26, 1977, 77-2 CPD 50, and J. & H. Smith Mfg. Co., Inc., B-184221, February 6, 1976, 76-1 CPD 78, which held that where there is no indication in the bid to show that first article testing prices are included in the price of the item, a bidder may not have the option of accepting or declining award by stating after

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bid opening that its first article testing price was or was not included in the bid price of the basic item.

In addition, Andrea cites numerous other decisions of our Office to support its view that National should have bid on each subline item to confirm its intent to perform in accord with the IFB's requirements. Andrea contends that absent a price for each subline item, National was not bound to perform the work involved in all subline items for the price offered and the precise extent of the testing that National would perform was ambiguous. Andrea concludes that National's failure to insert mandatory pricing data created a cloud of uncertainty concerning National's obligation to perform all the IFB's first article testing requirements, thus requiring rejection of National's bid.

In the earlier decision, our primary concern was whether National's bid contained a sufficient indication that first article testing prices were included in the price inserted for the basic item. Unlike the situations in the decisions cited by the Army or Andrea, National submitted a basic bid, which had one unit price for the basic item (\$154) and an alternate bid, which had another unit price for the basic item (\$149). The IFB permitted either a basic bid including first article testing or (for qualified bidders) an alternate bid excluding first article testing. Since National was not eligible for award on the alternate bid basis, its alternate bid was not considered. From the structure of bidding permitted by the Army, we concluded that the unit price difference (\$5) in National's bids reflected the price of first article testing for all four subline items. We recognize that it is not possible to further deduce how National intended to allocate the \$5 price to the four subline items but, in the circumstances, there is no need to do so because the IFB stated that a single award would be made for all items. Thus, if first article testing was required, all four subline items would be procured. In our view, since National's total price for all subline items was known, the Army obtained all the information it needed from National's bid and National would be bound to satisfy all IFB requirements at the unit prices of its bid. Thus, the failure to include a price for all subline items was an informality which could be waived.

Our conclusion is supported by several decisions. For example, in B-161012, June 13, 1967, we held that the low bid was not nonresponsive for failure to insert a price for "data for item 2"--even though the invitation "boiler plate" contemplated a price for each item--since the invitation also provided that award was to be made on an aggregate basis; thus, individual unit prices were not material to the evaluation of bids and we concluded that the failure to quote an individual unit price should have been waived as a minor informality.

Further, in B-151276, May 28, 1963, the invitation provided that, while separate item prices were required, award would be made by schedule and not on the basis of separate items under a particular schedule. We held that it was not proper to reject the low bid as nonresponsive for failure to provide a price for each item (it provided only a total price per schedule) because although the price breakdown by item was desirable for administrative purposes, it was not of any significance in determining the low bidder and the low bidder's failure to separately price items did not give it an advantage over other bidders.

Finally, in B-176425, October 18, 1972, the invitation required unit prices for certain disclosed quantities of work but the low bidder inserted only aggregate prices; the contracting officer accepted the bid as responsive despite clear invitation warnings to the contrary. We held that the bid was responsive because (1) award was to be made on the "lowest total bid" basis, (2) unit prices were not used in the evaluation of bids, and (3) no other bidder was prejudiced. We also noted that while the invitation provided that unit prices "shall" be shown, a requirement in an IFB is not necessarily mandatory simply because it is expressed in mandatory terms, even with a warning that nonobservance thereof will result in rejection of the bid as nonresponsive.

In applying the logic of these decisions to the unique factual situation of the instant matter, we must conclude that (1) National's bid price for the basic items was \$149 and its unit price for all four subline items related to first article testing was \$5, (2) National's failure to separately price each subline

item may be waived as a minor informality since such pricing was only for the agency's information and award was contemplated on the basis of all first article subline item requirements, (3) the IFB's mandatory provision requiring subline item prices did not establish mandatory minimum needs of the Government, (4) the subline item prices were not necessary for evaluation of bids, (5) National's bid was a firm commitment to perform all work required by the IFB, and (6) other bidders were not prejudiced by National's bidding technique.

Accordingly, the July 25, 1980, decision is affirmed since it has not been shown that the decision contained any error of fact or law.

*Harry R. Van Cleave*

For the Comptroller General  
of the United States