

Marrow
25063

DECISION



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

FILE: B-209239

DATE: May 5, 1983

MATTER OF: Steel King Industries, Inc.

DIGEST:

1. Protester's bid offering alternative prices based on all or none by State or all or none by State with a minimum award quantity was not ambiguous.
2. Bidder who offered "all or none" on groups of items and then gave lower bid price if minimum quantity was awarded was entitled to award when it offered a lower overall price for the combination of items bid, even though its prices for some of the individual items necessary to reach minimum quantity may have been higher than those of another bidder.

Steel King Industries, Inc. (Steel King), protests the evaluation of its bid under invitation for bids No. DLA004-82-B-0020, for 2,798 each self-dumping hoppers, issued by the Defense Depot, Memphis, Tennessee, Defense Logistics Agency (DLA). Steel King maintains that under its offer "B," it had submitted the lowest aggregate price for several items listed in the solicitation.

We sustain the protest.

The IFB required bidders to submit separate unit prices for 110 line items consisting of various quantities of hoppers to be shipped to several destinations in the United States and foreign countries.

In response to the IFB, Steel King submitted two offers, "A" and "B," which were explained by a cover letter as follows:

"There are substantial savings in transportation costs to be realized from shipping into a contiguous area. Also, there are substantial savings to be realized in the production of large quantities. Our offer 'A' is designed to pass on to the Government

025504
005/15

the savings in transportation cost realized from shipping into a contiguous area. Our offer 'B' is designed to pass to the Government both the saving in freight cost reflected in offer A and the savings resulting from the production of large quantities.

* * * * *

"Offer 'A' therefore is a series of 'all or none' offers, each of which covers all of the hoppers to be delivered within a particular state or foreign country * * *.

* * * * *

"Offer 'B' differs from offer 'A' only in that the prices quoted are based on a minimum award quantity of 1,800 hoppers. The 'all or none by destination' restriction of offer 'A' applies also to offer 'B,' but the minimum award quantity can be composed of any mix of items."

Steel King argues that under its offer "B" for items Nos. 0001-3, 0006, 0010-13, 0017, 0018, 0025-41, 0044-48 and 0051-80, the aggregate price is lower than the price at which DLA awarded these hoppers. We agree.

The contracting officer concluded that the bid was ambiguous because it was capable of being interpreted two ways. Under the contracting officer's construction, offer "B" would only be activated if Steel King was low on a state-wide basis before adding the States necessary to arrive at the minimum award quantity of 1,800 hoppers. Steel King's position is that the minimum award quantity can be determined by totaling any combination of States, without the restriction of finding it low on each individual State under offer "A."

Specifically, the contracting officer reports:

"The protester * * * indicated that offer 'B' differs from offer 'A' only in that prices quoted are based on a minimum award quantity of 1800 hoppers, but stating the minimum award quantity can be composed of any mix of items. It did not elaborate further as to how they intended the phrase 'any mix

of items' would be applied [when asked Steel King stated] * * * that a minimum award quantity of 1800 units must be reached under offer 'B' before [the lower prices] could apply and that 1800 units may be arrived at by accumulation of individual line items or grouping the all or none low aggregate cost to each destination.

* * * * *

"* * * Therefore, apparently [Steel King] was uncertain as to how they intended offer 'B' should apply. Otherwise, he would not have suggested they be allowed to include states * * * for which they were not low in order to increase the minimum award quantities to 1800 units."

DLA contends that two interpretations are a de facto showing of ambiguity and that under our Office's decisions, when a bid is subject to more than one reasonable interpretation, only one of which will render the bid low, the bidder is not permitted to explain its ambiguous bid if to do so would prejudice the other bidders.

While the above standard is one rule we have applied to ambiguous bids, we also recognize that the mere allegation that something is ambiguous does not make it so. Some factors in a writing may be somewhat confusing without constituting an ambiguity provided an application of reason would serve to remove the doubt. Crown Transfer Company, B-202572, October 29, 1981, 81-2 CPD 366. An ambiguity in a bid, which requires extraneous evidence for its interpretation, may make an award improper. However, where a single reasonable interpretation exists, without a need for extraneous evidence, the ambiguity is resolved. Murray & Tregurtha Division of Mathewson Corporation; Schottel of America, Inc., B-187232, December 14, 1976, 76-2 CPD 484.

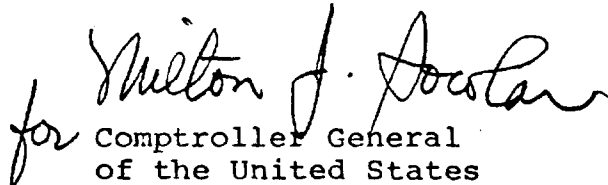
Based on the protester's cover letter, we do not agree with the contracting officer's interpretation of offer "B." The use of the phrase "any mix of items" admittedly is confusing; but, when it is construed against the background of the letter as a whole, the confusion disappears. It is obvious that offer "B" only differs from offer "A" by requiring a minimum award quantity of 1,800 units, not that each all or none grouping by State comprising the 1,800 minimum had to be low. Under offer "B," Steel King's letter

specified a minimum quantity of 1,800, which clearly cannot be interpreted as specifying the condition, posited by the contracting officer, that each individual all or none grouping by State had to be low under offer "A" to arrive at the minimum award quantity.

Moreover, where award on a combination of schedules (or items or areas) is contemplated, the award made must result in the lowest cost to the Government. To do otherwise would violate 10 U.S.C. § 2305(c) (1976), which requires that award be made on that bid which is most advantageous to the Government, price and other factors considered. Therefore, an all or none (and minimum award quantity) bidder is entitled to award when it offers a lower overall price for a particular State or foreign country even though its price for certain of the items within a State or foreign country may be higher than some other bidder's price. See Canova Moving and Storage Company, B-207168, January 18, 1983, 83-1 CPD 59. This is so notwithstanding a statement in the solicitation that award will be made by item or area.

Accordingly, we find nothing objectionable about Steel King's use of an alternative bidding format with prices based on all or none by State or all or none by State plus a minimum award quantity. Clearly, the individual awards made were not the most advantageous to the Government, price and other factors considered. Therefore, we sustain the protest.

However, since it appears that deliveries under the contract are substantially completed, we are unable to recommend any corrective action.

for 
Comptroller General
of the United States