

DECISION

28598

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

FILE: B-213939

DATE: June 22, 1984

MATTER OF: Southwest Business Publications
Company

DIGEST:

Protest contending that bid was erroneously rejected as nonresponsive is academic since the protester was not the low bidder and thus would not be in line for award even if its protest were sustained.

Southwest Business Publications Company protests the rejection of its bid by the Department of the Army under invitation for bids (IFB) No. DADA03-83-B-0057. The IFB invited bids to provide one-year subscriptions to 500 medical journals, as well as 30 supplements to the journals. Southwest's bid was rejected as nonresponsive because it included prices for only 492 of the required publications and contained ambiguities and other discrepancies. Southwest argues that the bidding deficiencies were minor and should have been waived.

We dismiss the protest.

The solicitation's schedule required a price for each subscription; an estimated total price for the subscriptions; a price for handling charges; and an estimated total price for the subscriptions and the handling charges. An economic price adjustment provision required the bidder to warrant that its unit prices were not more than its established prices after applying any applicable standard trade discounts offered by the bidder from his catalog, list, or schedule prices. Bids were to be evaluated "on discount offered and handling charges."

The low total bid of \$39,945.42 was rejected because prices for some of the items were subject to rate increases, and the bid did not include handling charges. The total prices bid by the other bidders ranged from \$45,816.29 to \$117,180.00, and the bid prices for handling charges ranged from \$475.00 to \$3,750.00. In this

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respect, there was no consistent relationship between the amounts of the handling charges and the total prices—for example, the handling charge for a total bid of \$117,180.00 was \$3,500.00, while the handling charge for another total bid of \$60,173.31 was \$3,750.00. Southwest bid \$475.00 for the handling charge, \$45,838.54 for the estimated total for the subscriptions, and thus \$46,313.54 for the estimated total for the contract. Boley International Subscription Agency bid \$876.33 for the handling charges, \$44,939.96 for the estimated total for the subscriptions, and thus \$45,816.29 for the estimated total of the contract.

We need not consider the propriety of the rejection of Southwest's bid as nonresponsive. The reason is that Southwest was not the low bidder under the IFR, so that the firm would not be in line for award even if its protest were sustained. The responsiveness of the bid therefore is academic, and will not be considered. See Schmid Laboratories, Inc., B-212024, Aug. 1, 1983, 83-2 CPD ¶ 147.

We understand informally from the Army, however, that the contracting agency awarded the contract to Boley only because its bid price for the handling charges—not its total bid—was the lowest of those received, after the low bid and Southwest's bid were rejected. Award on that basis only would be inconsistent with the IFR's evaluation criterion, as well as the statutory requirement at 10 U.S.C. § 2304(c) (1982) that award in a formally advertised procurement be made to the responsible, responsive bidder whose bid will be most advantageous to the government in terms of price, since the low price here obviously is reflected in the low total bid (subscription price plus handling charges). Nevertheless, since Boley's total bid price was also the lowest responsive one, the award to Boley was proper.

Harry R. Van Cleve
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Acting General Counsel