

DECISION



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

30921

FILE:

B-218056

DATE: April 4, 1985

MATTER OF:

Riverport Industries, Inc.

DIGEST:

1. Protest is dismissed as academic where the agency has resolved the issue in the protester's favor.
2. Where alternative bids are requested, one with first article approval test and one without first article, a bid based on either alternative is responsive.
3. Protest is dismissed as academic where the challenged bidder submitted the highest bid and is therefore not in line for award.

Riverport Industries, Inc. (Riverport) protests the award of a contract to any of three other bidders by the U.S. Army Munitions and Chemical Command under invitation for bids (IFB) No. DAAA09-84-B-0661 for pallet adapter sets. Riverport contends that the bids submitted by Acme Wire Products, Crown Products, and McGrail Equipment Company were incomplete, since they did not include four separate prices for item 001 as allegedly required by the IFB. The four prices allegedly required were for the sets F.O.B. origin with and without a first article test, and for the sets F.O.B. destination with and without a first article test. Riverport argues that the omission of these prices renders each of these bids nonresponsive.

We dismiss the protest in part and deny it in part.

The Army has rejected Acme Wire Product's bid as nonresponsive because the firm failed to certify its intent to supply an item manufactured or produced by a small business as required by this solicitation, a 100 percent small business set-aside. Because the Army has already rejected Acme's bid, Riverport's protest is moot as to this firm, and we will not consider it. See Alan Scott Industries, B-217190.2, Dec. 18, 1984, 84-2 CPD ¶ 681.

After Acme's bid was rejected, Crown Products was the apparent low, responsive bidder. This firm submitted a bid

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for the sets with first article, approval, F.O.B. origin and with first article approval, F.O.B. destination. Riverport protests that Crown's bid is nonresponsive because it omitted prices for the sets without first article approval. The protester argues that the notation on page one of the solicitation that the offer "must be fully completed by the offeror" requires that each bid include all four prices. The protester also cites paragraph L-3 from page 50 of the IFB, which states that "award will be made to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered." It is the protester's position that unless all four prices are submitted, the Government will not have any basis for determining which method of procurement would be "most advantageous."

Riverport has incorrectly interpreted the bidding requirements. The IFB specifically advises that the procurement is subject to first article approval tests. Only those bidders who had previously supplied identical or similar pallet adapter sets to the Government could qualify to have the first article approval waived and could, therefore, submit bids reflecting no first article test. If a bidder believed it was qualified for a waiver of the testing requirements, the bidder was to insert the previous contract number and date of first article approval of the item in a space provided in paragraph L-3. Crown did not furnish this information and was not seeking such waiver. Without this waiver, Crown was not eligible to bid to supply pallet adapter sets without first article testing, and the inclusion of such prices would be meaningless. The separate prices requested in the IFB represented alternative bids, not mandatory portions of a single bid. Where alternative bids are requested, one with first article approval and one without, a bid based on either alternative is responsive and may be considered. ICSD Corp., B-208433, Jan. 18, 1983, 83-1 CPD ¶ 62. We find that here, Crown submitted proper alternative bids. This portion of the protest is therefore denied.

Riverport's protest regarding the third bidder, McGrail Equipment Company, rests on similar grounds. However, we note that McGrail submitted the highest bid and is, therefore, not in line for award. Consideration of this portion

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of Riverport's protest would therefore be academic and would serve no useful purpose. See Pioneer Recovery Systems, Inc., B-214700 et. al., Nov. 13, 1984, 84-2 CPD¶ 520. This portion of the protest is dismissed.

for Seymour Efron
Harry R. Van Cleve
General Counsel