



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Milwaukee Electronics Corporation
File: B-224499
Date: September 22, 1986

DIGEST

When a solicitation is structured to require bids both with and without first article testing, alternate bids are permitted and will be responsive. To require all bidders to include prices based on a waiver of first article testing, regardless of whether they are qualified for a waiver, would be meaningless.

DECISION

Milwaukee Electronics Corporation protests the award of a contract for circuit card assemblies for the TOW Missile System to Chrionics, Inc. The protester argues that the U.S. Army Missile Command (MICOM), Redstone Arsenal, Alabama should have rejected Chrionics' bid for failure to provide price for a line item covering the production quantity without first article testing.

We deny the protest.

The facts concerning the procurement are not in dispute. MICOM issued the solicitation, No. DAAH01-86-B-A185, as a small business set-aside on January 24, 1986. The agency sought unit prices for an initial quantity of 111 assemblies and for an additional estimated quantity of 211 to be ordered as required through fiscal year 1990. The solicitation was structured so that line item 1 included the first article and the production quantity; line item 2 included the production quantity without the first article; and line item 3 covered the additional quantity. It stated that award would be made on the basis of the aggregate low bid for either line items 1 and 3 or line items 2 and 3.

After the low bidder on this basis was found nonresponsible and declined to apply for a certificate of competency, Chrionics was next-low with unit prices of \$365 for the production quantity with the first article and \$360 for the

additional quantity. Although a preaward survey resulted a recommendation against award, the Small Business Administration issued a certificate of competency on June 16, and MICOM therefore awarded Chrionics a \$40,515 contract on July 18.

Milwaukee Electronics' protest is based on the awardee's acknowledged failure to submit a price for line item 2, covering the production quantity without first article testing. The protester relies on two solicitation provisions in arguing that the agency should have rejected the as nonresponsive: L-14, which stated that bidders who fail to bid on all three related line items "may cause their offer/bid to be rejected," and M-4, which stated that any bids that failed to include prices for each line item "will be rejected as nonresponsive."

In its report on the protest, MICOM states that since Chrionics was not a proven producer of the assemblies, the government could not have made an award to it without requiring first article testing and approval. While noting that in the IFB the government had reserved its right to waive the requirement, MICOM argues that it would be improper to reject a bid for failure to include a price based on a waiver for which the bidder could not qualify. The agency cites our decision in Riverport Industries, Inc., B-218056 Apr. 4, 1985, 85-1 CPD ¶ 390, for the proposition that when alternate bids, one with first article testing and one without, are requested, a bid based on either alternative responsive.

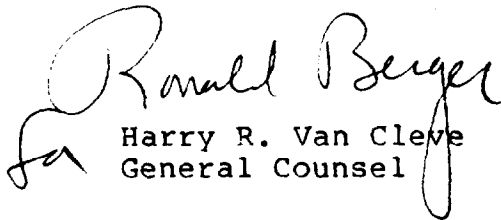
In its comments on the report, the protester attempts to distinguish Riverport by arguing that the solicitation in that case merely stated that offers "must be fully completed." This language, Milwaukee Electronics asserts, is vague and allows the acceptance of alternate bids, while the issue here specifically requires the pricing of each line item and, by implication, specifically disallows alternate bids.

In addition, the protester argues that the government could have waived the first article requirement for Chrionics, since there have been a number of previous suppliers and since detailed technical specifications for the assemblies are available. Thus, the protester argues, the procurement falls under the Federal Acquisition Regulation, 48 C.F.R. § 9.304 (1985), which permits waivers of first article testing. The protester appears to contend that Chrionics' failure to submit a price for the production quantity without first article testing prevented the government from saving money by using the waiver.

We think the protester's reading of the solicitation language at L-14 and M-4 is unreasonable. As we stated in affirming our decision in Riverport, it would be meaningless to require bidders to include prices based on a waiver of first article testing, regardless of whether they qualify for the waiver. See Riverport Industries, Inc.--Request for Reconsideration, B-218056.2, May 21, 1985, 85-1 CPD ¶ 576. We continue to regard a solicitation structured to require bids both with and without first article testing as permitting alternate bids, either of which will be responsive.

There is nothing in the record to indicate that Chrionics itself is a previous supplier of the spare parts in question, either to the government or to another supplier, thus enabling it to qualify for a waiver of first article testing. Chrionics did not apply for a waiver, and MICOM clearly states that it would not in any event grant one. Finally, the protester's argument concerning savings to the government is without merit, since its own unit prices (\$399 for the production quantity without the first article and \$348 for the additional quantities) are such that an award to it on this basis would cost the government more than the award to Chrionics that includes the first article.

The protest is denied.


Harry R. Van Cleave
General Counsel