



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Island Components, Inc.
File: B-225983
Date: April 24, 1987

DIGEST

Bid was responsive and did not violate level pricing provision of the solicitation where the IFB only required level pricing of production quantities with first article and bid contained a permissible different price for production quantities without first article.

DECISION

Island Components, Inc. (ICI) protests the award of a multiyear contract for a quantity of servomechanisms, a repair part for the Hawk Missile system, to PBR Electronics, Inc. under invitation for bids (IFB) No. DAAH01-86-B-A343, issued by the Army Missile Command, Redstone Arsenal, Alabama. ICI contends that the Army improperly rejected its low bid as nonresponsive due to an alleged failure to follow solicitation requirements regarding level pricing.

We sustain the protest.

The IFB, a total small business set-aside, was issued on September 19, 1986 as a 4-year solicitation for the procurement of a maximum total quantity of 72 servomechanisms. The solicitation was structured so that the first-year base requirement was for 12 production units (item 0001AA), which included one first article, or, alternatively, for 12 production units (item 0002AA) without a first article. Items 0003, 0004, 0005, and 0006 of the schedule each had an estimated quantity of 12 units and a maximum ordering quantity of 15 units; they represented the government's estimated requirements for the 4 program years in addition to the base requirement. The solicitation provided that bids were to be evaluated for purposes of award by adding the total price of item 0001AA or item 0002AA, as applicable, to items 0003 through 0006. The solicitation also cautioned offerors that

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unit prices bid for items 0003 through 0006 must not be greater than the prices bid for item 0001AA or item 0002AA, but could be less. Bids were opened on October 24, 1986.

Pertinent portions of the bid schedule and the prices submitted by the two low offerors were as follows:

Item No.	Supplies/Services	Quantity	Unit Price	
			ICI	PBR
0001	Servomechanism			
	<p>"CLIN 0001 includes one (1) each first article and contractor testing of the first article in accordance with the first article approval clause. See Section B-1 and I-2."</p> <p>"The proposed unit price for the first article will be the same as the unit price for the production quantity. Any offer for which the first article unit price differs from the production quantity unit price shall be rejected as nonresponsive."<u>1/</u></p>			
0001AA	Production Quantity	12 ea.	\$3,574	\$3,499
0002	Servomechanism			
0002AA	Production Quantity Without First Article	12 ea.	\$3,474	\$3,499
0003	Additional Estimated Quantity-Program Year 1	12 ea.	\$3,474	\$3,499

1/ We note that by requiring bidders to submit level prices for the first article and for the related production quantity, the Army sought to prevent bidders from grossly front-loading first article prices as a means to obtain unauthorized contract financing. For a discussion of improper pricing of first article, see Edgewater Machine & Fabricators, Inc., B-219828, Dec. 5, 1985, 85-2 CPD ¶ 630; Riverport Industries, Inc., 64 Comp. Gen. 441 (1985), 85-1 CPD ¶ 364, aff'd upon reconsideration, B-218656.2, July 31, 1985, 85-2 CPD ¶ 108.

0004	Additional Estimated				
	Quantity-Program Year 2	12 ea.	\$3,474	\$3,499	
0005	Additional Estimated				
	Quantity-Program Year 3	12 ea.	\$3,474	\$3,499	
0006	Additional Estimated				
	Quantity-Program Year 4	12 ea.	\$3,474	\$3,499	
Evaluated Total:			\$209,640	\$209,940	

The Army did not waive first article and awarded the contract for items 0001AA and items 0003 through 0006 to PBR after rejecting ICI's bid as nonresponsive because ICI had not bid the same price for item 0001AA as for item 0002AA. According to the Army, the level pricing provision listed under item 0001 also applied to item 0002AA. The Army made this determination despite the fact that the solicitation also provided elsewhere as follows:

"L-13. The Government reserves the right to award the production quantity which includes the first article, or if the requirement for the first article is waived by the Government, to award the production quantity only. Space is provided and a contract line item number is assigned for the purpose of proposing/bidding a price for the production quantity without a first article . . . NOTE: First article costs will not be separately stated. The unit price for the first article and its related production quantity must be the same or the offer will be considered nonresponsive." (Emphasis supplied.)

The Army, in rejecting the ICI bid, recognized the rule that in cases dealing with a bidder's failure to level price its bid, the determinative issue is not whether the bidder violated the level pricing provision, but whether this deviation worked to the prejudice of other bidders. See Arcwel Corp., B-219961, Dec. 27, 1985, 85-2 CPD ¶ 722. The Army found prejudice in ICI's failure to level price its bid due to the extreme closeness of the low and second low bid prices. The Army argues that there is no evidence that ICI relied on clause L-13 in formulating its bid and that, in any event, in case of inconsistencies, the schedule should control.

ICI simply contends that it reasonably believed that the level pricing requirements listed under item 0001 applied to that line item only and not to item 0002. ICI notes that at

least 5 of the 11 bidders in this procurement also interpreted the level pricing provision as not precluding a different price for item 0002.

The level pricing provision was included in the schedule under item 0001 only and stated that the first article price will be the same as the production quantity unit price. The immediately preceding sentence refers to "CLIN 0001 [as including] one (1) each first article," and a related solicitation provision (Clause L-13) specifically states that the price for the first article and its related production quantity must be the same. While there is no apparent reason for a provision requiring level prices for item 0001 alone, except for explanatory purposes, since only one price was requested for item 0001, there is equally no apparent reason for providing a space for a separate price for production quantity without first article if the prices had to be the same for both items 0001 and 0002. Under the Army's interpretation of the level pricing provision as being applicable to production quantities with or without first article, either a bidder would not be able to amortize first article costs over the production quantities that are awarded with a first article requirement, or, alternatively, the government would be required to pay for the amortized first article costs for the production quantities that are awarded without a first article requirement. We think the Army's position is untenable and we also think that the protester's interpretation of the level pricing provision was the only reasonable interpretation. In this regard, we fail to see why bidders should not be permitted to offer a different price for the amortized first article included in production quantities as well as a separate price for production quantities without first article so as to allow bidders to pass on the savings associated with a waiver of first article to the government. Accordingly, we think ICI submitted a responsive bid and we sustain the protest.

By separate letter of today, we are recommending to the head of the agency that the Army terminate for the convenience of the government the contract awarded to PBR and that award be made to ICI, if otherwise eligible.

The protest is sustained.

Melton J. Towan
for Comptroller General
of the United States