



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: GEM Engineering Company, Inc.
File: B-231605.2
Date: September 16, 1988

DIGEST

Bid which did not contain unit prices as required by the solicitation is responsive when the price per unit can be determined by dividing the total price for the item by the estimated quantity, the bid commits the contractor to perform the exact thing called for in the solicitation at a fixed price and no other bidder is prejudiced by the agency's waiver of the defect as a minor irregularity.

DECISION

GEM Engineering Company, Inc. protests the proposed award of a contract to Blueridge General, Inc. under invitation for bids (IFB) No. DTFA05-88-B-50595, issued by the Federal Aviation Administration (FAA) for the construction of an airport surveillance radar facility at Norfolk International Airport, Norfolk, Virginia. GEM contends that Blueridge's bid is nonresponsive because it did not contain unit prices as required by the solicitation. We deny the protest.

The IFB was issued on April 8, 1988 and required bidders to specify a lump sum bid price as well as unit prices. Award was to be made on an all or none basis. The IFB further specified that bids received without unit prices would be considered nonresponsive. The bid form listed 18 items with an estimated quantity, a description of the unit, a description of the required work and spaces for unit prices and totals after each item. The total job price was then to be inserted in another section of the solicitation.

Blueridge, the awardee, only specified total prices for each item and a job total, leaving the unit price spaces blank. Fourteen of the 18 items listed the estimated quantity as "job" and the unit description as "each." Accordingly, for these items the bidders' unit prices were the same as

043280/136843

the total prices for each item. The remaining items and the awardee's bid were as follows:

Item No.	Est. Qty.	Units	Description	Unit Prices	Total
2	3/8	Acre	Site work, clearing & grubbing		\$3,900
4	10	CY	Grading		3,500
5	275	CY	Crushed stone 6" surface		12,000
6	135	CY	Concrete work		61,000

The contracting officer initially informed Blueridge that its low bid was nonresponsive because it did not contain the unit prices as required by the IFB and that award would be made to GEM, the second low bidder. Following a protest filed by Blueridge, the contracting officer reversed his decision and found Blueridge's bid responsive because the unit prices could be determined in each instance by dividing Blueridge's total item price by the specified unit quantities. GEM then filed this protest with our Office.

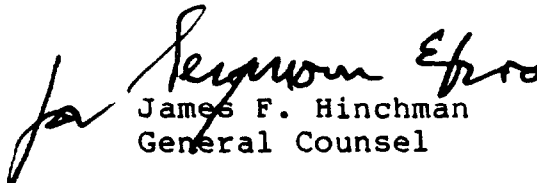
GEM argues that Blueridge's bid is nonresponsive because its unit prices for items 2, 4, 5 and 6 are not determinable. According to GEM, simply dividing the total prices for the items by the estimated quantities to obtain a unit price does not bind Blueridge to perform at those prices since the IFB does not define the term "unit price." GEM contends that because the IFB provides that the quantities shown in the schedule of items are estimates and that payment will be made at the unit price for the quantity actually furnished, Blueridge's omission of a unit price gives it the option to insist upon whatever price it wants for any quantity of work which exceeds the estimate.

We find that Blueridge's bid is responsive and that it is legally bound to perform any additional work at the unit prices calculated by dividing its total prices by the estimated quantities. The omission of unit prices does not render a bid nonresponsive when the low bid can be evaluated on a basis common to all bids; under those circumstances, the omission constitutes a minor informality that may be waived under Federal Acquisition Regulation (FAR) § 14.405. Aqua Marine Constructors, B-212790, Oct. 20, 1983, 83-2 CPD ¶ 471. Although the IFB provided that bids without unit prices would be deemed nonresponsive, rejection of the bid

is not required where the omitted unit price may be ascertained by dividing the total item price by the stated number of units. Id. Even though Blueridge did not provide the prices in the manner required by the IFB, there is no doubt that the firm has committed itself to perform the exact work required at a fixed price. In our opinion, Blueridge's failure to provide the unit prices here is a matter of form rather than of substance, a minor irregularity that has not prejudiced the other bidders, and it therefore can be waived by the agency. See FAR § 14.405; Artisan Builders, 65 Comp. Gen. 240 (1986), 86-1 CPD ¶ 85.

The agency's use of estimated quantities in the IFB does not alter this conclusion. The solicitation provided that the quantities listed were approximations and that the contractor was required to furnish whatever quantities were needed to complete the project. Blueridge committed itself to specific unit prices for the items since it submitted total item prices for the quantities stated in the IFB. Contrary to GEM's assertion, we see no possible ambiguity in the meaning of the term "unit price" which might allow Blueridge later to claim that it is not committed to the unit prices calculated by dividing the total prices by the estimated quantities. A solicitation is ambiguous in a legal sense only where, when read as a whole, it is susceptible of two or more reasonable interpretations. Niedermeyer-Martin Co., B-226623, July 8, 1987, 87-2 CPD ¶ 23. The only reasonable interpretation of unit price in this instance is the price per specified unit, with the price remaining constant for each unit.

The protest is denied.


James F. Hinchman
General Counsel