



Comptroller General
of the United States

Washington, D.C. 20548

Schatz

Decision

Matter of: Consolidated Duct Systems, Inc.
File: B-241402; B-241402.3
Date: February 6, 1991

Leonard Molin for the protester.
Craig Hodge, Esq., and Martha A. Stanczak, Esq., Department of the Army, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Upward correction of bid was proper where evidence, including bidder's worksheets and price list, clearly demonstrated the existence of a mistake and the intended bid, which was below the next low bid by approximately 4 percent.
2. Bid that takes no exception to solicitation requirement that offered equipment interface with equipment existing at the agency obligates bidder to provide such equipment and is therefore responsive; whether bidder actually performs contract with equipment that meets all specifications is a matter of contract administration, which is the responsibility of the contracting agency and not within the purview of bid protest function.
3. Contracting officer reasonably determined that awardee satisfied requirement for documentation of at least two examples of past performance showing successful installment of similar systems, where investigation of five projects listed by the prospective awardee showed such similar installations.

DECISION

Consolidated Duct Systems, Inc. (CDS) protests the award of a contract by the Department of the Army to King-Fisher Co., under invitation for bids (IFB) No. DAAC71-90-B-0029. CDS contends that an upward correction of King-Fisher's low bid should not have been permitted, and that King-Fisher's bid is nonresponsive in any case.

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We deny the protest.

The solicitation requested firm-fixed-price bids for the removal of existing hard-wire-type fire alarm equipment and the installation of a radio-transmitter-type system in Buildings 1A and 1B at Tobyhanna Army Depot, Tobyhanna, Pennsylvania. Five bids were received and opened on September 5, 1990. King-Fisher was the apparent low bidder with a price of \$73,200, and CDS was the apparent second-low bidder at \$155,850; the government estimate for the project was \$172,500.

Due to the significant price disparity between King-Fisher's bid and CDS' bid and the government estimate, the Army asked King-Fisher to verify its bid. King-Fisher responded that its bid was understated due to a mistake. Specifically, King-Fisher explained that in calculating its bid it had prepared two estimate worksheets. One worksheet, prepared on August 24 by the firm's superintendent, included \$73,200, which King-Fisher explained covered installation costs for only part of the equipment and materials, even though it was notated "total \$73,200" at the bottom. The second worksheet, prepared on August 29 by a different company official, included, according to King-Fisher, the remainder of the estimated costs, \$77,000; the second worksheet contained notations indicating that the \$73,200 total was added to the \$77,000 total to reach the "grand total \$150,200," which was followed by the notation "BID \$149,800" (an arbitrary \$400 reduction, King-Fisher explained, consistent with its normal bidding practices). King-Fisher explained that, in transferring its bid to the bid schedule, the typist mistakenly entered the \$73,200 "total" from the first worksheet (submitted to the typist on top of the second worksheet) as the bid price without looking at the bottom worksheet with the intended total bid of \$149,800. The bid then was signed by a company official who had not prepared any of the bid costs. King-Fisher therefore requested upward correction in the amount of \$76,600.

On September 28, after denying an agency-level protest by CDS, the contracting officer found that the evidence submitted by King-Fisher clearly and convincingly proved the existence of both the mistake and the intended bid. He therefore concluded that King-Fisher should be allowed to correct its bid from \$73,200 to a total bid price of \$149,800.

CDS alleges that upward correction of King-Fisher's bid was improper because King-Fisher essentially was allowed to negotiate with the government, after all bidders' prices were exposed, to more than double its low bid to a corrected price that is only slightly under its own bid.

Upward correction of a low bid to an amount that is still lower than the next low bid is proper where clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. Federal Acquisition Regulation (FAR) § 14.406-3(a). In considering upward correction of a low bid, worksheets may constitute clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. Lash Corp., 68 Comp. Gen. 232 (1989), 89-1 CPD ¶ 120. While correction is more difficult to prove the closer the corrected bid is to the next low bid, the fact that they are close does not automatically preclude correction. Utah Constr. and Dev. Co., B-222314, June 10, 1986, 86-1 CPD ¶ 541.

We find that the upward correction of King-Fisher's bid was based on clear and convincing evidence of the mistake and the intended bid. King-Fisher's apparent low bid of \$73,200 was significantly below CDS' second-low bid of \$155,850 and the government estimate of \$172,500 reasonably indicating that King-Fisher had made a mistake in its bid. King-Fisher's explanation, together with its worksheets and other documentation, confirmed the mistake and, we find, provided sufficient evidence of the intended bid. In this regard, in support of its correction request, King-Fisher submitted the two worksheets in question, a company price list covering the required equipment, and sworn affidavits from the individuals involved in the mistake. Viewing the worksheets together, it is clear that the first one (August 24) does not include the cost for the entire contract effort. Rather, the first worksheet principally covers labor costs, overhead, profit, spare parts, maintenance, and manuals, with relatively few equipment and material costs listed (approximately \$18,300 in total). The second worksheet (August 29) lists prices for the bulk of the required equipment, including the single largest item, the base station control console. The prices on this worksheet correspond to those for equipment on the price list the firm submitted. As the worksheets are in good order and support the explanation of the manner in which the mistake occurred, and as there is no contravening evidence as to the mistake or intended bid, the upward correction was proper.

Even though King-Fisher's corrected bid of \$149,800 was more than double its initial bid of \$73,200, as CDS alleges, King-Fisher's bid as corrected still remained low by \$6,050, approximately 4 percent, and did not displace any other bid. Contrary to the protester's contention, such a margin is not so small as to preclude upward correction. See G.N. Constr., B-209641, June 2, 1983, 83-1 CPD ¶ 598.

CDS also alleges that King-Fisher's bid should be rejected as nonresponsive because King-Fisher does not manufacture equipment that complies with the specifications, in particular, the requirement that equipment furnished be compatible with the SIGCOM equipment existing at the depot. CDS maintains that King-Fisher should have been required to establish before bid opening that its equipment does interface with the existing equipment.

To be responsive, a bid must unequivocally offer to provide the exact thing called for in the IFB, such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Only where a bidder provides information with its bid that reduces, limits, or modifies a solicitation requirement may the bid be rejected as nonresponsive. Oscar Vision Sys., Inc., B-232289, Nov. 7, 1988, 88-2 CPD ¶ 450.

The IFB here required only that bidders agree to furnish alarm equipment conforming to the specifications; it did not require bidders to identify the particular systems they were offering, or to establish in their bids that the systems on which their bids were based satisfy the specifications. King-Fisher took no exception to any solicitation requirements and thus agreed --by bidding in response to the IFB structured in this manner --to furnish a system in compliance with all specifications. Thus, whether or not King-Fisher manufactures equipment that interfaces with the existing equipment as required, King-Fisher's bid bound the firm to furnish equipment meeting this and all other requirements. See Southern Ambulance Builders, Inc., B-236615, Oct. 26, 1989, 89-2 CPD ¶ 385. Therefore, King-Fisher's bid was responsive as submitted. We note that whether King-Fisher performs its contract in accordance with the specifications is a matter of contract administration, which is the responsibility of the contracting agency and not within the purview of our bid protest function. Standard Mfg. Co., Inc., B-236814, Jan. 4, 1990, 90-1 CPD ¶ 14.

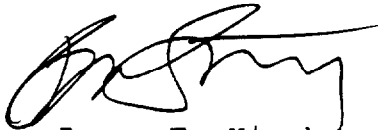
CDS contends that King-Fisher's bid also is nonresponsive because the firm failed to submit with its bid, for approval by the contracting officer's representative (COR), five copies of the specifications and catalogue cuts of the manufacturer's items which King-Fisher planned to substitute for its own equipment. The IFB contained no such bidding requirement. Note 2 of the IFB required COR approval "if the contractor wishes to substitute" equipment (emphasis added). This is a performance requirement that did not affect the responsiveness of King-Fisher's bid, that is, the firm's binding agreement to the IFB terms. See Motorola Comms. and Elecs., Inc., B-225613, Jan. 27, 1987, 87-1 CPD ¶ 91.

CDS also argues that King-Fisher's bid should have been rejected because King-Fisher failed to comply with the IFB requirement that each bidder submit a minimum of two examples of past performance showing "that the bidder has successfully installed radio fire alarm systems of similar type and design as specified herein." CDS asserts that King-Fisher did not meet this requirement because none of the five projects King-Fisher listed required equipment to be interfaced with SIGCOM equipment; CDS concludes that the listed systems were not of "similar type and design."

We find the contracting officer reasonably concluded that King-Fisher met the requirement. The Army investigated three of the five projects the firm listed, and specifically determined that both King-Fisher and the subcontractors supervised by King-Fisher had successfully installed radio fire alarm systems, converted hard-wire systems to radio fire alarm systems, and installed systems that required interfacing with SIGCOM and other equipment. The agency points out, moreover, correctly we believe, that the "similar type and design" provision nowhere expressly required, and was not intended to require, a showing that bidders had installed systems that interfaced with SIGCOM equipment; bidders only needed to show that past projects involved the same type of work (installing radio alarm systems and converting to hard-wire alarm systems) as required in the current IFB. Again, we think King-Fisher properly was found to have met this requirement.

Finally, the protester alleges that King-Fisher had an unfair competitive advantage because, as a manufacturer of radio fire alarm equipment, it presumably can submit a lower bid. A firm may enjoy a competitive advantage by virtue of its particular circumstances; the government is not required to equalize such an advantage. Master Sec., Inc., B-232263, Nov. 7, 1988, 88-2 CPD ¶ 449.

The protest is denied.



James F. Hinchman
General Counsel