



Comptroller General  
of the United States

Washington, D.C. 20548

K. Riback

## Decision

**Matter of:** Mansfield Associates, Inc.

**File:** B-242270

**Date:** March 13, 1991

Jeffrey Barrett for the protester.

Grant L. Clark, Esq., Rivkin, Radler, Bayh, Hart & Kremer, for Gerrard Aircraft Parts, Inc., an interested party.  
Bruce W. Baird, Esq., Defense Logistics Agency, for the agency.

Katherine I. Riback, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Where agency did not incorporate by reference a provision expressly permitting all-or-none bids, this omission does not constitute a prohibition on all-or-none bids, so as to render nonresponsive a bid containing an all-or-none qualification.

### DECISION

Mansfield Associates, Inc. protests the cancellation of its award of a purchase contract and the subsequent award of a contract to Gerrard Aircraft Parts, Inc., under invitation for bids (IFB) No. 27-0148, for the sale of various surplus electronic communication and aircraft equipment, parts, hardware and components by the Defense Logistics Agency, Defense Reutilization and Marketing Service (DRMS).<sup>1/</sup> Mansfield contends that the award to Gerrard is improper because Gerrard's all-or-none bid was not authorized under the IFB.

We deny the protest.

The IFB, issued in late August 1990, contained a page entitled "CONDITIONS OF SALE-SEALED BID," which states that "[t]he General Information and Instructions and General and Special

<sup>1/</sup> We consider this protest under 4 C.F.R. § 21.11 (1990), as the Defense Logistics Agency, by letter dated January 13, 1987, has agreed to our considering bid protests involving its surplus property sales. See Consolidated Aeronautics, B-225337, Mar. 27, 1987, 87-1 CPD ¶ 353.

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Conditions are hereby incorporated by reference and become a part of this Invitation for Bids . . . ." The IFB explains that the incorporated material is contained in a specified DRMS sale pamphlet and listed the following specific provisions contained in the DRMS pamphlet as applicable to this sale:

"Part 3: Special Sealed Bid Conditions  
(Standard Form 114C-1, Jan. 70 ed., and DRMS  
Form 99, Sept. 88), All Conditions except  
Condition A and F."

Condition F expressly permits bidders to submit all-or-none bids.

Bid opening was on September 27, 1990. Mansfield submitted the high individual bid of \$21,000 on item 62, and S.P. Airparts submitted the high individual bid of \$6,488.92 on item 64. Gerrard submitted an all-or-none bid of \$30,987.91 for both items 62 and 64, which was \$3,498.99 higher than the \$27,488.92 combined price of the individual bids submitted by Mansfield and S.P. Airparts.

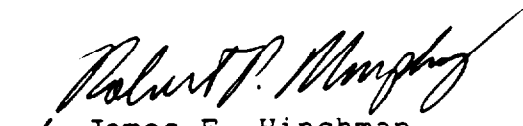
The contracting officer determined that, because the IFB did not incorporate Condition F of Part 3 permitting all-or-none bids, all-or-none bids were not acceptable, and therefore, rejected Gerrard's all-or-none bid as nonresponsive. On October 4, 1990, the contracting officer awarded items 62 and 64 to Mansfield and S.P. Airparts, respectively. By letter dated October 9, 1990, Gerrard protested to the agency the rejection of its all-or-none bid and the award to S.P. Airparts and Mansfield. In response, on November 30, 1990, DRMS determined that the separate awards to Mansfield and S.P. Airparts were improper because Gerrard's high all-or-none bid was responsive in view of the fact that it was not prohibited by the IFB. DRMS subsequently accepted Gerrard's all-or-none bid, whereupon Mansfield protested to our Office. DRMS has withheld performance of the sale pending resolution of the protest.

The protester argues that the agency incorrectly determined that Gerrard's all-or-none bid was acceptable under the IFB because the sale conditions which were incorporated by reference specifically omitted all-or-none bids. The protester contends that Gerrard submitted an all-or-none bid because it did not read the solicitation carefully and is now trying "to recover from their error" by claiming that all-or-none bids are acceptable.

Bidders may condition acceptance upon award of all or a specified group of items, unless such bids clearly are prohibited by the solicitation. Federal Acquisition Regulation (FAR) § 14.404-5. Accordingly, where a solicitation does not expressly prohibit all-or-none or similarly restricted bids, such bids must be considered for award. Phillips Cartner & Co., Inc., 69 Comp. Gen. 105 (1989), 89-2 CPD ¶ 492. Thus award to bidders who submitted bids on an all-or-none or combination basis is not precluded even where the IFB contains phrases such as "award will be made on a lot basis only" and "award will be made on an item-by-item . . . basis." The Interior Steel Equip. Co., B-209016, Feb. 8, 1983, 83-1 CPD ¶ 139. The reasoning is that failure to make award to an all-or-none bidder submitting the bid which would result in the lowest overall cost to the government violates the requirement to award to the responsible bidder whose responsive bid is most advantageous to the government, considering only price and price related factors. See FAR § 14.407-1(a); Reliable Elevator Corp., B-213245.2, Mar. 7, 1984, 84-1 CPD ¶ 276. The same considerations and principles apply to all-or-none bids under surplus property sales. See Leonard Joseph Co., B-182303, Apr. 18, 1975, 75-1 CPD ¶ 235.

Here, while a provision in the DRMS pamphlet that specifically permitted all-or-none bids was not incorporated by reference into the IFB, we do not agree with the protester that this constitutes an express prohibition of all-or-none bidding. Rather, the effect is that the IFB is silent concerning the acceptability of all-or-none bids. DRMS has pointed out that where it has administratively determined that there is a basis to preclude all-or-none awards, it normally includes a solicitation provision that such bids will be rejected as nonresponsive. Because the IFB at issue did not contain such an unequivocal prohibition against all-or-none bids, the agency correctly concluded that it is required to make the award to Gerrard on the basis of its high all-or-none bid. See The Interior Steel Equip. Co., B-209016, supra.

The protest is denied.

  
for James F. Hinchman  
General Counsel