



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: KW Control Systems, Inc. *Accounting*

File: B-246963

Date: December 13, 1991

Hugh R. Overholt, Esq., Maupin Taylor Ellis & Adams, P.C.,
for the protester.

Catherine M. Evans, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protester's low bid properly was rejected as nonresponsive for failure to offer firm, fixed price where bid contained letter stating that any difference between actual cost and bid price for certain equipment would be charged to the government.

DECISION

KW Control Systems, Inc. protests the rejection of its low bid as nonresponsive under Army Corps of Engineers solicitation No. DACW33-92-B-0004, the second step of a two-step sealed bid procurement for a power supply and distribution system at the Internal Revenue Service Center, Holtsville, New York.

We dismiss the protest.

In the course of preparing its bid, KW unsuccessfully attempted to obtain pricing information from the local electric company, Long Island Lighting Company (LILCO), from which it would be required to purchase certain equipment. As KW thus did not know how much it would actually have to pay the electric company for the equipment, it included its own estimate of \$50,000 in its bid. KW's bid also included a statement that the \$50,000 figure was provided in lieu of actual prices from LILCO, and that "the actual cost difference will then be charged to IRS." Based on this statement, the contracting officer determined that KW's bid was nonresponsive because it did not offer a firm, fixed price.

In order to be responsive, a bid must constitute an unequivocal offer to provide without exception exactly what the solicitation requires at a firm, fixed price. Re Con Paving, Inc., B-198294, Apr. 24, 1980, 80-1 CPD ¶ 297. A

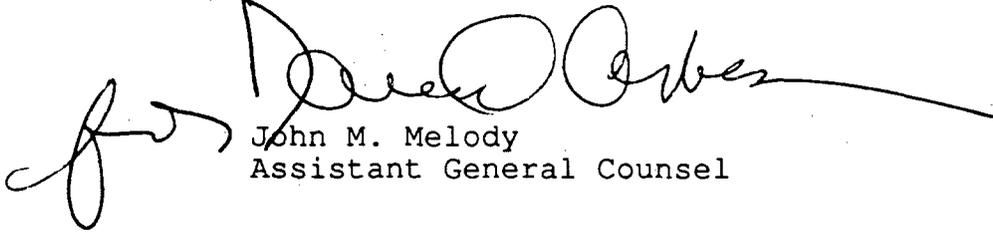
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bid must be rejected as nonresponsive if it is not clear from the face of the bid what the government's total payment obligation would be upon acceptance. Reid & Gary Strickland Co., B-239700, Sept. 17, 1990, 90-2 CPD ¶ 222.

KW's bid statement that it would charge to IRS the difference between the actual cost of equipment and its bid price clearly did not represent a firm, fixed price. While KW asserts that the \$50,000 figure was intended to be a "not to exceed" amount, post-bid opening explanations cannot be considered in a responsiveness determination. Sess Constr. Co., 64 Comp. Gen. 355 (1985), 85-1 CPD ¶ 319. In any case, this explanation is entirely inconsistent with the bid statement that the difference will be charged to the government. We conclude that KW's protest is without merit. See Re Con Paving, Inc., supra.

The protest is dismissed.



John M. Melody
Assistant General Counsel