



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: GTA Containers, Inc.
File: B-249327
Date: November 3, 1992

David P. Taylor, Esq., for GTA Containers, Inc., for the protester.
Douglas K. Olson, Esq., Kilcullen, Wilson and Kilcullen Chartered, for American Fuel Cell and Coated Fabrics Co., an interested party.
Richard A. Couch, Esq., and Robert P. Willenbrink, 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

Where protester's bid failed to include unit and extended prices for two line items in response to a solicitation requiring bidders to enter unit and extended prices for every line item, the bid was properly rejected as nonresponsive notwithstanding the fact that after bid opening the agency erroneously accepted the protester's correction of its bid and the extension of its bid acceptance period.

DECISION

GTA Containers, Inc. protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. DAAK01-92-B-0036, issued by the Department of the Army for semi-trailer mounted fabric tanks used to transport water to troops in the field. GTA asserts that the Army improperly determined that its bid was nonresponsive for failure to provide unit or extended prices for two contract line items.

We deny the protest.

The IFB, issued on January 30, 1992, contained a bid schedule calling for bids on base and option items, and provided that the bids would be evaluated for award by adding the total price for all the options to the total price for the basic requirement. Pursuant to Federal Acquisition Regulation (FAR) § 52.214-12, incorporated by

reference in the IFB, bidders were required to enter the unit and extended prices for all line items.

The agency received six bids. After the apparent low bid was rejected as nonresponsive, GTA's bid became low; the bid of American Fuel Cell and Coated Fabric Company (Amfuel) was next low. GTA's bid schedule, however, did not include the unit and extended prices for CLINs 0001AC and 0002AC (covering initial production articles). The contracting officer initially determined that the omission was a minor informality and gave the firm the opportunity to correct the deficiency, specifically requesting GTA to verify its bid. In response, GTA provided in writing its prices for the two CLINs. At this point, the contracting officer requested GTA to extend its bid acceptance period for 60 days, and GTA did so in writing. Thereafter, the Army determined that GTA's failure to provide the two CLIN prices in the bid schedule, in fact, could not be waived as a minor informality, and it therefore rejected the bid as nonresponsive. The Army concluded in this regard that GTA's omission meant that the firm had not legally bound itself to furnish the unpriced items. Upon learning of the subsequent award to Amfuel, GTA filed an agency-level protest, which was denied. This protest followed.

The protester argues that the Army's acceptance of both GTA's correction of its bid and extension of its bid acceptance period shows the Army determined GTA's bid, as corrected, was responsive. The protester maintains that the agency may not reverse that initial decision and accept a higher bid.

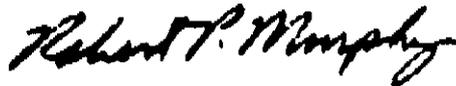
A bid, to be responsive, must constitute an unequivocal offer to provide the exact items or services called for in the IFB, so that government acceptance of the bid will legally bind the bidder to perform the contract in accordance with all the material terms and conditions. See Dalco Indus. Textile Corp., B-223968, Oct. 29, 1986, 86-2 CPD ¶ 490. As a general rule, a bid must be rejected as nonresponsive if, as submitted, it does not include a price for every item requested by the IFB. This rule reflects the legal principle that a bidder who has failed to submit a price for an item generally cannot be said to be obligated to furnish that item. United Food Servs., 65 Comp. Gen. 167 (1985), 85-2 CPD ¶ 727.¹

¹A bid which fails to price every line item requested by the IFB may nevertheless be responsive where (1) the bid itself reveals a consistent pattern of pricing indicating the intended price, or (2) the unpriced item is divisible from the solicitation requirements, is de minimis as to total

(continued...)

The agency properly determined that GTA's bid was nonresponsive. The firm's failure to include unit and extended prices for the two CLINs made it impossible to determine from the face of the bid not only the intended prices for the two line items, but also whether GTA was actually agreeing to provide these items. Thus, GTA's bid failed to present an unequivocal offer to provide all the items required in the IFB, and had to be rejected as nonresponsive. The fact that the Army took steps (erroneously) after bid opening to permit GTA to correct its bid does not change the fact that GTA's bid was unacceptable. Bid responsiveness is determined at bid opening, and a nonresponsive bid cannot be rendered responsive by subsequent events. See Penn Perry, Inc., B-241777, Mar. 1, 1991, 91-1 CPD ¶ 235; Engineered Modular Structures, Inc., B-236804, Sept. 20, 1989, 89-2 CPD ¶ 254, aff'd, B-236804.2, Oct. 26, 1989, 89-2 CPD ¶ 386. While rejection of GTA's bid may result in additional cost to the government for this procurement, it is well-established that a nonresponsive bid cannot be accepted solely on the basis of its lower price; acceptance of such a bid would compromise the integrity of the competitive bidding system. Industrial Structures, Inc., 64 Comp. Gen. 768 (1985), 85-2 CPD ¶ 165.

The protest is denied.



for James F. Hinchman
General Counsel

¹(...continued)

cost, and is irrelevant to the competitive standing among bidders. See Upside Down Prods., B-243308, July 17, 1991, 91-2 CPD ¶ 66. Neither exception applies here. There was no other CLIN in the bid schedule that covered the initial production articles, and there was no basis for finding a pricing pattern for these items. Further, the agency considered these CLINs material and not divisible from the IFB since the initial production articles were to be used by the government and the contractor to validate and verify the technical manuals and provisioning data. See Biehn Constr., Inc., B-244364, Sept. 9, 1991, 91-2 CPD ¶ 231.