



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Federal Systems Group, Inc.

File: B-261781

Date: September 28, 1995

Patrick C. Hanner for the protester.

Charlotte Rothenberg Rosen, Esq., McGuire, Woods, Battle & Boothe, for Severn Companies, Inc., an interested party.

Craig E. Hodge, Esq., and Maj. Harry W. Longbottom, Department of the Army, for the agency.

Robert C. Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of rejection of a bid as nonresponsive is denied where bid did not commit protester to provide all items required by the solicitation at a fixed price set forth at the time of bid opening.

DECISION

Federal Systems Group, Inc. (FSG) protests the rejection of its bid under invitation for bids (IFB) No. DAAD01-95-B-0205, issued by the Department of the Army for computer hardware, software and maintenance to extend the existing Ethernet network at the Yuma Proving Ground in Arizona. The protester disputes the agency's determination that its bid was nonresponsive.

We deny the protest.

The IFB was issued on March 3, 1995, contemplating the award of a 3-year requirements contract against which individual delivery orders would be placed. The solicitation included 102 separate contract line items (CLIN) for hardware, software and extended maintenance beyond the standard commercial warranty period. The IFB stated that the "equipment and software [is to be used] in conjunction with existing and future networking systems [at Yuma]" to "allow the government to create, configure and add network segments as required."

Section M.1 of the IFB provides

"A bidder . . . must quote on all items in the solicitation to be eligible for award. The Government will award on a 'All or None' basis. Evaluation of bids . . . will be based . . . upon the total price quoted for all items."

Seven bids were received at bid opening on May 17. The three lowest were

<u>Bidder</u>	<u>Evaluated Price</u>
Planning Technologies, Inc.	\$4,064,485.26
FSG	\$4,239,998.06
Severn Companies, Inc.	\$4,293,742.47

The bids submitted by Planning Technologies and FSG were rejected as nonresponsive and award was made to Severn on June 7. This protest followed.

For 55 of the 102 CLINs, the protester did not enter a price; rather, in the space provided next to each of these CLINs, FSG typed "NSP [i.e., not separately priced] INCLUDED IN CLIN [with a specific item number inserted]." Most of these NSP entries involved CLINs for extended maintenance for various hardware and software items. The Army rejected FSG's bid as nonresponsive on the basis that, by including the price of extended maintenance in the hardware and software prices, the bid in effect deprived the agency of the option of ordering required extended maintenance on an "as needed" basis. FSG responds that, since it offered a 3-year commercial warranty for all hardware and software items, extended maintenance protection was unnecessary.

While there is nothing in the protester's bid describing the terms or duration of its standard commercial warranty, we need not resolve the dispute between the parties regarding FSG's bidding practices on the maintenance items because, as discussed below, FSG's bidding on non-maintenance items rendered its bid nonresponsive.

For example, CLIN 0021 described a network management service module (workstation) to be compatible with equipment manufactured by Silicon Graphics (SG). Items related to the SG-compatible workstation included CLINs 0024, 0025, and 0026 which respectively described low capacity, medium capacity, and high capacity internal disk drive options.

FSG "bundled" its pricing as follows on these representative¹ non-maintenance items:

CLIN 0021	Workstation	\$ 14,430.50
CLIN 0024	Low Capacity Drive	"NSP INCLUDED IN CLIN 0021"
CLIN 0025	Medium Capacity Drive	"NSP INCLUDED IN CLIN 0021"
CLIN 0026	High Capacity Drive	"NSP INCLUDED IN CLIN 0021"

The protester asserts that the agency never intended to purchase the disk drives separate from any purchase of a new basic workstation and notes that the disk drives are integrally related to the workstation in question. Thus, FSG argues that its bid was responsive to the IFB requirements because it offered a firm fixed price for any combination of the Army's needs for workstations and disk drives.

The Army states that purchases of disk drives under the contract will not always be linked to workstation purchases under the contract because the purpose of the solicitation is to, among other things, permit the purchase of items to modify existing equipment at Yuma already owned by the agency. Thus, the Army argues that, by not separately pricing disk drives, FSG has not committed itself to meeting all of the agency's stated minimum needs. We agree.

A bid must reflect an unequivocal offer to provide the exact items or services called for in the IFB so that acceptance of the bid will bind the contractor to perform strictly in accordance with the IFB's material terms and conditions to meet the government's stated needs. International Pressure Serv., Inc., B-227952, Oct. 5, 1987, 87-2 CPD ¶ 339. Where, as here, a single award is to be made for multiple line items, the general rule is that a bid must be rejected as nonresponsive if it does not include a fixed price for every item requested by the IFB; this rule reflects the legal principle that a bidder failing to submit a fixed price for a required line item has not obligated itself to provide all of the items required by the government. MTC Indus. & Research Carmiel, Ltd., B-227163, Aug. 18, 1987, 87-2 CPD ¶ 174.

The use of a pricing entry "NSP" by itself does not normally require the rejection of a bid since the term generally equates with a zero dollar fixed price and indicates a bidder's affirmative intent to provide items required by the IFB at no charge to the government. AUL Instruments, Inc., B-220228, Sept. 27, 1985, 85-2 CPD ¶ 351. However, there are circumstances where the use of the notation "NSP" does not serve to establish a bidder's commitment to provide items required by the

¹FSG similarly bundled prices on other non-maintenance items including CLINs 0022 (8MB memory upgrade) and 0023 (32MB memory upgrade) and CLINs 0030 (ATM interface) and 0086 (ATM bridge).

government at prices which are fixed at bid opening--in which case a bid using "NSP" pricing may properly be rejected as nonresponsive. See The Orkand Corp; Department of the Navy--Recon., B-224466.2; B-224466.3, Jan. 23, 1987, 87-1 CPD ¶ 88 (reversing SMC Info. Sys., B-224466, Oct. 31, 1986, 86-2 CPD ¶ 505).

Contrary to FSG's supposition that the IFB does not evidence the agency's intention to purchase disk drives without also purchasing new workstations, the language of the solicitation clearly indicated that the agency intended to purchase items to modify its existing network equipment and it further indicated that bidders were required to price all items in order to have their bids considered.

FSG's use of the notation "NSP INCLUDED IN CLIN 0021" for "pricing" the disk drive items does not establish a commitment to provide disk drive items separately; rather, it commits the bidder to supply disk drives without additional charge only when expensive workstations are purchased under the contract. Indeed, in its comments on the agency report, the protester's representative concedes that FSG's bid does not commit the firm to provide disk drives without also providing workstations. Since the agency's stated requirements include separate purchases of disk drives, and FSG has not obligated itself to honor delivery orders for disk drives only, the bid was properly rejected as nonresponsive since there was no unequivocal offer to meet the material terms of the IFB. International Pressure Serv., Inc., supra.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel