

DOCUMENT RESUME

03250 - RA2173292]

[Protest against the Rejection of Low Bid as Nonresponsive].
E-189326. August 2, 1977. 3 pp.

Decision re: Kaiser Aerospace & Electronics Corp.; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Army: Army Armament
Command, Rock Island, IL; General Electric Co.; Precision
Products.

Authority: A.S.P.R. 2-404.2(d). A.S.P.R. 2-404.1. 44 Comp. Gen.
753. 44 Comp. Gen. 756. B-172439 (1971). B-185330 (1976).
B-185331 (1976). B-185776 (1976). B-184157 (1976).

The protester objected to the rejection of their modified proposal for an ammunition device as nonresponsive. A bid submitted with a statement requesting use of Government-furnished equipment that was neither in the offeror's possession nor offered for use under the solicitation was properly rejected as nonresponsive. Price reasonableness is a matter within the discretion of the contracting officer; the award to a bidder whose price was substantially higher than that offered by a bidder whose bid was properly rejected as nonresponsive did not constitute a showing of abuse of discretion. (Author/SC)

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William Motherspoon
Proc. I

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-189326

DATE: August 2, 1977

MATTER OF: Kaiser Aerospace & Electronics Corporation

DIGEST:

1. Bid submitted with statement requesting use of Government-furnished equipment that was neither in the offeror's possession nor offered for use under IFB was properly rejected as nonresponsive to the IFB.
2. Price reasonableness is matter within discretion of contracting officer and our Office will not interfere absent showing of abuse of discretion. Award to bidder whose price was substantially higher than that offered by bidder whose bid was properly rejected as nonresponsive does not constitute showing of abuse of discretion.

Invitation for bids (IFB) No. DAAA09-77-B-2001 was issued on February 1, 1977, by the United States Army Armament Command (Army), Rock Island, Illinois, for testing and production of 292 M89E1 Gun-feeders, a clutching device used to feed ammunition to the M-197 gun. The following bids were received in response to the IFB:

<u>Bidder</u>	<u>Bid Price Per Unit</u>	<u>Total Price</u>
General Electric	\$5,364.00	\$1,566,288.00
Precision Products N. Haven, Conn.	5,100.00	1,489,200.00
Solarex, Deerpark, N.Y.	4,235.00	1,236,620.00
Kaiser Aerospace & Electronics Corp. (Kaiser)	3,576.43	1,044,317.56

(Kaiser's price is its final price, revised in response to Army inquiries regarding correctness of initial price)

On April 5, 1977, the Army informed Kaiser that it was the apparent low bidder, and requested Kaiser to review its bid for possible errors. Kaiser requested permission to correct its bid by letter of April 22, 1977, and submitted a corrected bid. On May 11, 1977, Kaiser withdrew a request it had made in its bid for the use of Government-furnished equipment (GFE) (a Mark 8-Mod 1 Belting Machine) that was neither in its possession nor offered for use under the solicitation, and further revised its price.

The Army awarded the contract to Precision Products on June 3, 1977, after finding that Kaiser's bid was nonresponsive to the IFB, and that Solarex was "not-responsible." The Army found Kaiser's bid nonresponsive due to Kaiser's request for the use of the supplemental GFE.

By letter filed in our Office on June 13, 1977, Kaiser protests the Army's finding of nonresponsiveness and the resultant award to Precision Instruments, contending that its request for the belting machine was inconsequential and insignificant. Kaiser states that it understood that under bid opening procedures the procuring activity has the option of making award to the low bidder while denying its request for supplemental GFE, or of asking the bidder to delete its request before making award. Kaiser argues that since it was not asked to withdraw its request for the supplemental GFE soon after bid opening, its request was inconsequential. Additionally, Kaiser contends that the price of the supplemental GFE (\$7,000), in comparison with the total cost of the procurement, renders its request insignificant. Kaiser argues alternatively that the price difference between its bid and that of the awardee is so great that the Government is not obtaining the items at a reasonable price and, consequently, should cancel the IFB and resolicit.

Paragraph 2-404.2(d) of the Armed Services Procurement Regulation (ASPR) (1976) provides in part as follows:

"Ordinarily, a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the Government, since to allow the bidder to impose such conditions would be prejudicial to other bidders.

* * * * *

"A low bidder may be requested to delete objectionable conditions from his bid provided these conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid where it affects price, quantity, quality or delivery of the items offered." (Emphasis added.)

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Kaiser's request for the use of the supplemental GFE was an attempt to impose a condition which would modify the requirements of the IFB, and which could be prejudicial to other bidders. See B-172439, August 2, 1971. Since the requested balting machine has an estimated cost of \$7,000, it affects the price of the items offered and, therefore, is a qualification of substance rather than of form. See 44 Comp. Gen. 753, 756 (1965). Consequently, the Army could not have requested Kaiser to delete the request for supplemental GFE, and Kaiser's bid was properly rejected as nonresponsive.

As stated above, Kaiser argues alternatively that the IFB should be canceled and resolicited because the awardee's price is unreasonable. In this regard, ASPR § 2-404.1 provides, in pertinent part, that:

"(a) The preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.

* * * * *

"Invitations for bids may be canceled after opening but prior to award when such action is consistent with (a) above and the contracting officer determines in writing that--

* * * * *

"(vi) all otherwise acceptable bids received are at unreasonable prices;"

The determination of price reasonableness is basically a business judgment requiring the exercise of broad discretion. See Park Manufacturing Company; Century Tool Company, B-185330, B-185331, B-185776, April 16, 1976, 76-1 CPD 260. This determination is to be made by the contracting officer and our Office will not interfere absent a showing of an abuse of discretion. See J.H. Rutter Rex Manufacturing Company, Inc., B-184157, February 23, 1976, 76-1 CPD 122; Park Manufacturing Company; Century Tool Company, supra.

While there is a large price difference between Kaiser's bid and Precision Product's bid, in our opinion that alone does not constitute a showing of abuse of discretion on the contracting officer's part.

Accordingly, Kaiser's protest is denied.

Deputy

R. F. Keller
Comptroller General
of the United States