

DECISION



11236
11236-96
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-194472

DATE: August 27, 1979

MATTER OF: Mountain Engineering and
Construction and Weisz
and Sons, a Joint Venture

DIGEST:

Omission of unit prices in bid was properly waived as minor informality where unit prices could be derived from face of bid by dividing total price for items by required quantity of each item, since bidder was committed to those unit prices by bid and therefore no other bidder was prejudiced.

Two companies operating as
Mountain Engineering and Construction and Weisz and Sons, (a Joint Venture (Mountain), has protested the award of a contract to ~~Oregon Iron Works, Inc.~~ (Oregon), for the manufacture, testing, delivery, and installation of selective withdrawal and penstock trashracks at Libby Additional Units and Reregulating Dam, Kootenai River, Montana, under invitation for bids (IFB) No. DACW-67-79-B-0018, issued by the United States Army Corps of Engineers (Corps), Seattle, Washington District.) *The...*

Mountain was the third low bidder, Oregon was the low bidder, and Steel Management, Inc. (Steel), was the second low bidder. Mountain contends that Oregon's bid was nonresponsive because (it did not contain required unit prices, and that Steel's bid was ambiguous because it contained a discrepancy between a unit price and the total bid price. Mountain argues that the bids of Oregon and Steel should have been rejected for those reasons and that award should have been made to Mountain.

Section E of the IFB set forth the items to be supplied, the quantities required, and the spaces for prices, as follows:

[ALLEGATION THAT AWARDEE OMITTED UNIT PRICES FROM BID]
110223
~~806361~~

<u>"ITEM</u> <u>NO.</u>	<u>Supplies Services</u> <u>and Prices</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit</u> <u>Price</u>	<u>Amount</u>
	Manufacture, test, deliver and install the following equipment in strict accor- dance with specifications contained in Section F.				
0001	Penstock Trash- rack Sections	20	ea	\$	\$
	*	*	*	*	*
				TOTAL	\$"

Amendment 0001 deleted item 0003, and increased the quantity of item 0005 from 38 to 42.

Oregon's bid included total unit for each item (amount column) and the total price, but omitted the unit prices for each item.

Mountain argues that Oregon's bid should have been rejected as nonresponsive for the following reasons.

First, paragraph 22 of the IFB states:

"22. BID QUANTITIES. Bids for less than specified quantities of each item in Section E of the Schedule will not be considered and failure to submit a unit price for each item where required in the Schedule will be considered as a material deviation from the requirements of the Solicitation, and the bid will be rejected."
(Emphasis added by Mountain.)

Therefore, Mountain contends, the omission of unit prices may not be waived as a minor informality and Oregon's bid was required to be rejected.

Mountain further argues that Oregon's commitment to perform what was required is unclear from its bid, since there were no unit prices in its bid. Mountain asserts that the inclusion of a "lot price" for each item does not commit Oregon to a specific unit price for any item. According to the protester, this commitment is necessary in the event that the Government might increase requirements or make an equitable adjustment. The likelihood of changes in requirements is evidenced by the deletion of item 0003 and the increase in quantity of item 0005 by amendment 0001.

Mountain also contends that, without unit prices, Oregon could have claimed that one item had been included in the price of another by mistake, and thereby could have had the option of reducing its bid price after opening. Finally, Mountain claims that permitting Oregon's bid to be considered prejudices other bidders who included unit prices thus accepting the risk that they would be held to that price.

In its response to the protest, the Corps contends that paragraph 22 of the IFB applies, by its terms, only to bids for less than the specified quantities. Since Oregon did not bid less than the specified quantities, that section does not apply here. The Corps also argues that ^{because} ~~(the omission of unit prices may be waived as a minor informality because it does not affect price, quantity or quality, and because the unit prices can be derived from the face of Oregon's bid simply by dividing the total prices for each item by the quantity for each item.)~~ Therefore, all bids can be evaluated on a common basis, and no bidder is prejudiced.

We agree with the Corps that Oregon's omission of unit prices may be waived as a minor informality pursuant to Defense Acquisition Regulation (DAR) § 2-405 (DAC No. 76-17, Sept. 1, 1978), and that its bid is responsive. We have held that omission of unit prices will not render a bid nonresponsive when the low bid can be evaluated on a basis common to all bids, and that the omission under such circumstances constitutes a minor informality that may be waived or cured under DAR § 2-405. Worldwide Services, Incorporated, B-187600,

January 6, 1977, 77-1 CPD 12. Included in such circumstances are cases where omitted unit prices may be ascertained by dividing the total item prices by the number of units shown in the bidding documents. Worldwide Services, Incorporated, supra; B-176425, October 18, 1972.

We agree with Mountain that paragraph 22 applies to the present situation, but we do not agree that it requires Oregon's bid to be rejected as nonresponsive. We have held that an IFB requirement for unit prices was not material, even though it was expressed in mandatory terms. B-176425, supra. We stated further that even a warning in the IFB that nonobservance of a requirement would result in rejection of the bid as nonresponsive, did not necessarily make the requirement a material one. B-176425, supra.

The circumstances here are nearly identical to the circumstances of Worldwide Services, Incorporated, supra; and B-176425, supra. Oregon's bid included total prices for specific quantities of each item. The required quantities were shown in the bidding documents. Thus, unit prices were clearly ascertainable from information in Oregon's bid; merely by dividing the total item prices for each item by the quantity shown.

Contrary to Mountain's argument, Oregon did commit itself to specific unit prices by bidding total unit prices for each item, since the quantity for each was stated. Therefore, Mountain's contentions concerning possible changes in requirements, potential claims by Oregon that it made a mistake in its bid, and prejudice to other bidders who stated unit prices are without merit, since those contentions are based on the assumption that Oregon's bid did not bind it to specific unit prices.

Since we have determined that Oregon's low bid was responsive, Mountain's contentions concerning Steel's bid are irrelevant and will not be addressed.

Accordingly, the protest is denied.

John D. Heller
For The Comptroller General
of the United States