

DECISION

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

FILE: B-220848.2

DATE: March 6, 1986

MATTER OF: General Electric Company

DIGEST:

Where an IFB contemplated the award of a firm, fixed-price requirements contract, a bid accompanied by a cover letter in which the bidder stated that its prices were subject to renegotiation if there were any change in the estimated quantities provided in the IFB was properly rejected as nonresponsive because the statement could reasonably be interpreted as indicating the bidder's intent to offer other than a firm, fixed price.

General Electric Company (GE) protests the award of a contract to another firm under invitation for bids (IFB) No. N68520-85-B-9130, issued by the Department of the Navy. The procurement is for the overhaul and update of the Linkless Ammunition Loading System (LALS) used on military aircraft. GE complains that the Navy improperly rejected its apparent low bid as nonresponsive. We deny the protest.

Background

The IFB contemplated the award of a firm, fixed-price requirements contract for a 1-year base period with four 1-year options. Accordingly, line item quantities were stated in the IFB as estimates. The IFB provided that the award would be made to the responsive, responsible bidder bidding the lowest total extended price and further provided that bidders were required to submit prices for all line items in order to be considered for award.

Although GE's bid was apparently low, the Navy rejected the bid as nonresponsive because it was accompanied by a cover letter in which GE had placed several conditions on its bid. At principal issue in this case, the cover letter,

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in part, stated that "Our price is for the quantity quoted. Any change in quantities is subject to re-negotiation." The Navy concluded that this language qualified GE's bid and thus prevented the award of a firm, fixed-price requirements contract as contemplated by the IFB.

GE argues that the quoted language only served to notify the Navy that GE was bidding on an "all or none" basis, that is, that it would only accept an award for the quantities stated in the IFB. GE contends that both the Federal Acquisition Regulation (FAR) and prior decisions of this Office generally allow for the submission of bids on an "all or none basis" and, therefore, that such a qualification did not render its bid nonresponsive.

Analysis

In order to be deemed responsive, a bid must unequivocally offer to provide the requested items and meet the material specifications at a firm, fixed price. Turbine Engine Services--Request for Reconsideration, 64 Comp. Gen. 639 (1985), 85-1 CPD ¶ 721. Thus, a bid that limits the firm's contractual obligations or does not offer to perform at a firm, fixed price must be rejected. Epcon Industrial Systems, Inc., B-216725, Dec. 27, 1984, 85-1 CPD ¶ 2. Any extraneous documents submitted with the bid, including a cover letter, must be considered a part of the bid for purposes of determining the bid's responsiveness. Free-Flow Packaging Corp., B-204482, Feb. 23, 1982, 82-1 CPD ¶ 162.

In the present matter, we believe that the quoted language in GE's cover letter can reasonably be interpreted to qualify the firm's bid because it indicated that GE's offered unit prices were subject to change if the Navy ordered quantities different from those estimates provided in the IFB. Where a bidder qualifies its bid for a firm, fixed-price contract by providing for price adjustments if certain circumstances occur, the bid is nonresponsive since the bidder has not offered a firm, fixed price. Computer Terminal Sales, B-200366, Jan. 22, 1981, 81-1 CPD ¶ 37. Moreover, the quantities stated in the IFB were only estimates and, therefore, since GE's unit prices were not firm but rather variable to the extent the quantities should change, the Navy had no clear way of determining that GE's total extended bid price was in fact low. It is a fundamental rule of sealed bidding that a bidder's total bid

price must be evident from all the bid documents submitted at the time of bid opening. Epcon Industrial Systems, Inc., B-216725, supra.

Contrary to GE's assertion, we do not regard the language in the cover letter as indicating a permissible "all or none" bid qualification. In this regard, where a solicitation permits multiple awards and does not expressly prohibit "all or none" or similarly restricted bids, a bidder may properly condition award on receipt of all or a specified group of items. Walsky Construction Co., B-216737, Jan. 29, 1985, 85-1 CPD ¶ 117; see also FAR, § 14.404-5 (FAC 84-5, Apr. 1, 1985). This is reflected in FAR, § 52.214-10(c) (FAC 84-5, Apr. 1, 1985), as incorporated into the subject IFB, which expressly states that:

". . . The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid."

However, despite the fact that GE's cover letter referenced this clause directly preceding the qualifying language at issue here, we do not accept the firm's argument that this clearly meant that GE was submitting an "all or none" bid. We point out that the IFB did not provide for multiple awards, but rather stated in section M-2, "EVALUATION FACTORS," that "Only one contract will be awarded based on [the total extended price]." Therefore, we fail to see how the language in question was meant to refer to the submission of an "all or none" bid when the IFB in fact provided that only one award would be made for all of the contract line items.

GE relies upon our decision in General Fire Extinguisher Corp., 54 Comp. Gen. 415 (1974), 74-2 CPD ¶ 278, to support its argument that the qualifying language in its cover letter only represented a permissible "all or none" condition. In that case, a bidder stated in its bid that "If award is to be made for any lesser quantity, we reserve the right to quote a revised unit price." We concluded that the statement was properly to be construed as an "all or none" bid which reserved the bidder's right to

revise its unit prices in the event the award were made for any quantity less than the stated 11,116 units. GE believes that the qualifying language in its cover letter is equivalent to that in General Fire Extinguisher and, therefore, that case is controlling here.

The present factual situation is clearly distinguishable because the IFB here provided for the award of a requirements contract, where the agency does not know beforehand exactly what quantities it will eventually order and solicits bids on the basis of estimated quantities (which simply must be reasonably accurate representations of anticipated actual needs). See Richard M. Walsh Associates, Inc., B-216730, May 31, 1985, 85-1 CPD ¶ 621. Unlike the situation in General Fire Extinguisher, where there was a definite total quantity of items, the Navy here could ultimately order lesser quantities than originally estimated in the IFB. Thus, it is inconsistent with the nature of a requirements contract for a bidder under an IFB contemplating the award of such a contract to submit an "all or none" bid and, thus, reserve the right to revise its unit prices if the award is made for any quantity less than that estimated, because the government simply has made no representation that the estimated quantity will be required or ordered. See FAR, § 16.503(a)(1).

Furthermore, even if GE actually intended the qualifying language to notify the Navy that its bid was submitted on an "all or none" basis, we believe it only served, at best, to render the bid ambiguous. If a bid is subject to more than one reasonable interpretation, it is ambiguous and must be rejected as nonresponsive under the rules applicable to sealed bid procurements. See Sabreliner Corp., 64 Comp. Gen. 305, (1985), 85-1 CPD ¶ 280. Thus, since the Navy could reasonably interpret the language in the cover letter as indicating that GE's offered unit prices were not firm but subject to change if the Navy did not order the estimated quantities provided in the IFB, the bid was properly rejected.

The protest is denied.

for *Seymour Efron*
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General Counsel