



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Engineered Air Systems, Inc.  
File: B-232237  
Date: November 9, 1988

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### DIGEST

1. Solicitation provision calling for unit prices for estimated quantities to correspond to unit prices for stepladder quantities is ambiguous where it can reasonably be interpreted as referring either to the aggregate estimated quantities or the individual quantities designated by destination within each line item.
2. Award under invitation for bids with ambiguous pricing provision to bidder which based its bid on one reasonable interpretation of provision is proper where bid would be low under either interpretation.

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### DECISION

Engineered Air Systems, Inc. (EASI), the second low bidder, protests the award of a contract to Air Cargo Equipment Corporation under invitation for bids (IFB) No. M00027-88-B-0022, issued by the U.S. Marine Corps for pallet containers, quadruple containers and associated equipment and data.<sup>1/</sup> EASI basically contends that Air Cargo's low bid should be rejected as nonresponsive because of pricing ambiguities which conflict with the pricing structure called for by the IFB.

We deny the protest.

The IFB called for award of a 1-year requirements contract with four 1-year options. Bidders were required to submit

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<sup>1/</sup> The containers are fire resistant shipping containers that will replace wooden containers deemed to constitute a fire hazard aboard U.S. Navy amphibious ships.

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bids for stepladder quantities of six items of equipment for the base and option years. The following is an example of the format used for equipment bids:

<u>ITEM NO.</u>	<u>BRIEF DESCRIPTION</u>	<u>QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL AMOUNT</u>
0003	Container, Connector, Horizontal * * *				
000301	* * *				
0003AA	Destination: Albany, GA, f.o.b. Origin	274	ea	\$ _____	\$ _____
0003AB	Destination: Barstow, CA, f.o.b. Origin	526	ea	\$ _____	\$ _____

Stepladder Quantities			
QTY	UNIT PRICE	QTY	UNIT PRICE
1-9	\$ _____	291-360	\$ _____
10-60	\$ _____	361-410	\$ _____
61-150	\$ _____	411-799	\$ _____
151-200	\$ _____	800-999	\$ _____
201-290	\$ _____	1000-1400	\$ _____

The ranges of the stepladder quantities differed for the six equipment line items. For all items of equipment, the quantities required were listed separately by destination. There were no aggregate quantities of equipment stated anywhere in the bid schedule. (Bids were also required for various items of technical data, but the pricing of these items is not the subject of this protest.)

With respect to the evaluation of bids for items with stepladder quantities, paragraph M.2 of the IFB stated:

"Evaluation of items with stepladder quantities will be based on the quantity specified for that item. Although the Government intends to order the quantities of items used for evaluation, the quantities actually ordered may differ. However, the unit price of the quantity being evaluated shall be the same price for the corresponding stepladder quantity (failure to bid in this manner may result in a nonresponsive bid). The contractor will be paid for the exact number of items actually ordered at the applicable stepladder quantity unit price for that quantity."

The low bidder was determined by adding the prices for the base and option year line items with the transportation costs calculated by the agency.

Four bids were submitted in response to the IFB. Air Cargo was determined to be the low bidder based on its total bid price of \$35,225,295 and the government's estimated transportation costs of \$959,410, totaling \$36,184,705. EASI was second low with a bid price of \$36,934,161 and estimated transportation costs of \$1,609,911, totaling \$38,544,072.

EASI contends that Air Cargo's prices for 25 out of 27 equipment line items were not the same as the corresponding stepladder prices as required by paragraph M.2 of the IFB, and that, as a result, the firm's bid must be rejected as nonresponsive. Air Cargo did not add the two quantities specified by destination for each equipment line item before determining the stepladder quantity price for the aggregate quantity, as was done by EASI and the other bidders, but instead selected the stepladder prices corresponding to the individual quantities ordered by destination. For example, under line item No. 0003, set forth above, Air Cargo bid \$226 for the 274 containers with a destination of Albany, Ga., corresponding to its price for the 201-290 stepladder quantity, and \$222 for the 526 containers with a destination of Barstow, Ca., corresponding to its price for the 411-799 stepladder quantity. Under EASI's interpretation of the IFB, however, the prices should have been calculated based on the 800 total containers for both destinations (274 plus 526), and Air Cargo therefore should have bid \$219 for both items, based on its price for the 800-999 stepladder quantity. EASI maintains that it is unfair and prejudicial to other bidders to permit Air Cargo to submit two different prices for the same line item because such a bid affords Air Cargo the opportunity to decide which of its stated prices it will choose to honor.

The Marine Corps agrees that Air Cargo's bid does not conform to the IFB requirement, but contends that the deviation is an immaterial irregularity which the contracting officer may waive. In this regard, the agency states that the unit prices bid by Air Cargo for the non-evaluated stepladder quantities are all equal to or lower than the evaluated quantities, thus eliminating the possibility that the firm is buying in on the evaluated quantities while attempting to recoup costs through the stepladder quantities.

To be responsive, a bid, as submitted, must comply in all material aspects with the terms of the IFB. Achievement Products, Inc., B-224940, Feb. 6, 1987, 87-1 CPD ¶ 132. Any bid containing a deficiency or deviation that goes to the substance of a bid by affecting the price, quality or quantity of the items offered must be rejected as nonresponsive. See Federal Acquisition Regulation (FAR) § 14.404-2(e).

Here, EASI argues that Air Cargo's bid was nonresponsive because it was not priced in accordance with EASI's interpretation of paragraph M.2 of the IFB. In our view, however, the relevant language of paragraph M.2--"the unit price for the quantity being evaluated shall be the same price for the corresponding stepladder quantity"--is ambiguous. While EASI's interpretation of the provision is reasonable and apparently was intended by the Marine Corps, the provision also can reasonably be interpreted, as Air Cargo did, to mean that the unit price for each separately stated quantity of equipment would be evaluated. For example, an examination of the bid schedule suggests that unit prices should have been based on an aggregate quantity because the total quantity for each item of equipment, even when an odd number, always equals the quantity at the bottom end of one of the stepladder quantities. On the other hand, the provision does not specifically state that the two quantities, set forth by destination, must be added together as EASI contends. On the contrary, the quantities are listed separately, each with blanks for the unit price and total amount, which suggests that the two quantities would be evaluated separately.

In view of the ambiguity in paragraph M.2 and the lack of clear directions in the IFB, we think Air Cargo could reasonably assume that the phrase "quantity being evaluated" meant the two separately stated quantities rather than a total quantity, and that the price for each separate quantity thus had to be equal to the unit price for the corresponding stepladder quantity. Since Air Cargo's bid reflects a reasonable interpretation of the solicitation, its bid cannot be viewed as nonresponsive for failure to comply with a solicitation requirement. See Rocky Mountain Trading Co., B-220925, Mar. 3, 1986, 86-1 CPD ¶ 214.

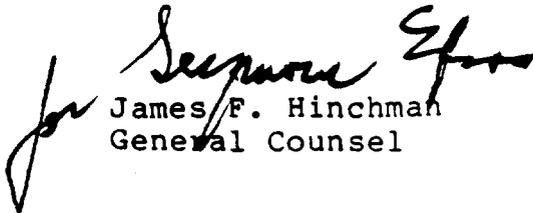
Further, we do not agree, as EASI argues, that Air Cargo's bid is unclear as to whether actual payments under the contract are to be based on the aggregate or individual stepladder quantities. As noted above, paragraph M.2 of the IFB provides that payments for the actual quantities ordered will be based on "the applicable stepladder quantity unit price." Since the unit prices for the evaluated quantities

in Air Cargo's bid correspond to the stepladder prices for each quantity by individual destination, it is clear that the unit prices for the actual quantities ordered are to be calculated by reference to each separately stated quantity, not to aggregate quantities.

We recognize that even under Air Cargo's interpretation of the IFB, five of the line item prices in its bid differ from the corresponding individual stepladder quantities. For example, under line item No. 0002AA, Air Cargo's price for the estimated quantity of 68 containers is \$2,370; the corresponding stepladder price for 32-95 containers is \$2,417.2/ Overall, however, Air Cargo's errors resulted in a bid price that was \$916 higher than it would have been without the erroneously stated unit prices. Under the circumstances, the Marine Corps determined that the errors constituted a minor irregularity subject to waiver under FAR § 14.405. We agree. Where, as here, the defect is immaterial because the effect on the bid price is negligible (it would lower Air Cargo's low bid of \$35,225,295 by \$916), the contracting officer is authorized to waive the deficiency. FAR § 14.405.

Finally, despite the fact that the bidders prepared their bids based on different interpretations of the required pricing structure, EASI was not prejudiced and Air Cargo derived no competitive advantage as a result of the ambiguity in the IFB, since under either interpretation of the IFB, Air Cargo's bid remains substantially lower than EASI's bid. See Pacific Coast Utilities Service, Inc., B-210285, June 29, 1983, 83-2 CPD ¶ 43.

The protest is denied.

  
James F. Hinchman  
General Counsel

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2/ Applying EASI's interpretation of the IFB, the five line item prices are all higher than the corresponding aggregate stepladder quantity. As a result, Air Cargo would have derived no competitive advantage from the discrepancies.