



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Valix Federal Partnership I

File: B-250686

Date: February 1, 1993

Stephen L. Mills for the protester.
Ross W. Dembling, Esq., and Daniel S. Koch, Esq., Kurz,
Koch, Doland & Dembling, for Laptops, etc., an interested
party.
Karin K. Fangman, Esq., General Accounting Office, for the
agency.
Jacqueline Maeder, Esq. and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

In a procurement for the purchase of up to 1,500 notebook computers where the schedule in the invitation for bids required bidders to submit single unit prices for estimated line item quantities of computers and where the protester split the agency's estimated line item quantities of computers to what it considered quantities most economically advantageous to the firm and separately priced these quantities, the protester's bid was properly rejected as nonresponsive. The protester's pricing scheme permits it to structure its bid to obtain maximum profits and to limit its economic risks in the event the agency does not purchase its estimated item quantities of computers, thus affording the protester an unfair pricing advantage over the other bidders.

DECISION

Valix Federal Partnership I protests the rejection of its bids as nonresponsive under invitation for bids (IFB) No. OAM-92-A-0003 issued by the General Accounting Office (GAO) for notebook computers. GAO rejected Valix's bids because the firm did not comply with the IFB bid schedule.

We deny the protest.

The IFB, issued June 10, 1992, contemplated the award of an indefinite delivery/indefinite quantity fixed-priced contract for a base year and 1 option year. The IFB required firms to provide notebook computers, software, manuals and support services for the installation and

support of the computers. The IFB set forth a base year minimum order of 10 and a total maximum order of 1,500 notebook computers. GAO estimated that it would order 800 computers during the base period and 700 during the option period and reserved the right to order the total quantity of 1,500 during the base period or up to 1,490 during the option period, depending on the availability of funds.

The IFB set forth the bid schedule essentially as follows:

BASE PERIOD: DATE OF AWARD THROUGH SEPTEMBER 30, 1992

Item	Quantity	Unit Price	TOTAL
1. "NOTEBOOK" COMPUTER	800	\$ _____	\$ _____

BIDDING ON: MANUFACTURER: _____
MODEL NUMBER: _____

OPTION I: OCTOBER 1, 1992 THROUGH SEPTEMBER 30, 1993

Item	Quantity	Unit Price	TOTAL
2. "NOTEBOOK COMPUTER"	700	\$ _____	\$ _____

BIDDING ON: MANUFACTURER: _____
MODEL NUMBER: _____

TOTAL BID-----\$ _____

In accordance with the terms of the IFB, the agency used the total bid price to determine the low bidder. The IFB cautioned that "[b]idders must bid on all quantities for each fiscal year (2 years). A less than complete bid on a line item or any other deviation from the above bidding scheme may cause the bid to be judged nonresponsive."

Thirty-four bids from 24 firms were submitted by the bid opening date of July 24, 1992.¹ The agency rejected the Valix bids as nonresponsive because the firm did not submit single unit prices for the base and option years in conformance with the IFB schedule. Rather, Valix split the agency's estimated quantities as listed in the bid schedule and submitted separate unit prices for each of those quantities. For example, the lowest of Valix's six bids was set forth as follows:

¹Based on the equipment of different manufacturers, one firm submitted two bids, Valix submitted six bids and the awardee submitted five bids.

Item 1

From Unit No.	To Unit No.	Qty.	Unit Price	Total
1	10	10	\$3,894	\$ 38,940
11	100	90	\$3,744	\$ 336,960
101	200	100	\$3,544	\$ 354,400
201	300	100	\$3,294	\$ 329,400
301	400	100	\$2,994	\$ 299,400
401	500	100	\$2,644	\$ 264,400
501	600	100	\$2,244	\$ 224,400
601	700	100	\$1,794	\$ 179,400
701	800	100	\$1,294	\$ 129,400
		800		\$2,156,700

Total Bid Item 1

Item 2

1	100	100	\$1,165	\$ 116,460
101	200	100	\$1,106	\$ 110,637
201	300	100	\$1,051	\$ 105,105
301	400	100	\$ 998	\$ 99,850
401	500	100	\$ 949	\$ 94,857
501	600	100	\$ 901	\$ 90,115
601	700	100	\$ 856	\$ 85,609
		700		\$ 702,633

Total Bid 1,500 \$2,859,333

Valix used the same pricing structure for all of its six bids. Instead of bidding a single unit price per computer, Valix bid varying prices depending on the number of computers ordered by the agency. Because of this, the agency rejected the bids as nonresponsive.

Valix argues that the agency improperly evaluated the bids and improperly rejected its bids as nonresponsive. The protester argues that the low bid was to be determined by adding the total price for the option period to the total price of the basic requirement and that based on that evaluation scheme all of its six bids are lower than the awardee's bid. The protester says that the agency's caution against deviating from the bidding scheme applies only to the requirement that the bidders bid on "the full quantities for all years," and that there was no requirement that bidders submit a single unit price.

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We conclude that the agency properly rejected the protester's bids. The award of government contracts pursuant to the rules of sealed bidding must be made on the same terms that they were offered to all bidders. Copy Duplicating Prods., Inc., B-245381, Dec. 30, 1991, 92-1 CPD ¶ 15. An irregularity in a bid resulting in benefits to a bidder not extended to all bidders by the IFB, and which is prejudicial to other bidders renders the bid nonresponsive. See New World Technology, B-237158, Jan. 19, 1990, 90-1 CPD ¶ 77; Thomas Constr. Co., Inc., B-184810, Oct. 21, 1975, 75-2 CPD ¶ 248; Federal Acquisition Regulation (FAR) § 14.404-2(d).

It is true as the protester points out, that there was no separate, specific instructions stating that only single unit prices could be submitted. Nevertheless, we think that it was clear from the structure of the bid schedule, which provided a single space for a unit price next to the estimated quantity, that a single price was called for. This, in our view, was reinforced by the IFB's warning that any "deviation"² from the bid schedule may cause the bid to be considered nonresponsive.

For each line item, Valix deviated from the IFB schedule by splitting the estimated line item quantity and pricing these smaller quantities separately. While this type of pricing structure yields a total bid for evaluation purposes, the higher unit prices for the initial quantities afford Valix the opportunity to realize more of a profit at the earlier stages of contract performance. Valix thereby not only minimized any risk that the agency will not need the total estimated quantity of computers, see Copy Duplicating Prods., Inc., supra., but placed itself in a position to receive an increased profit with each computer ordered below the maximum.

Valix's pricing strategy enabled it to offer lower overall prices than it otherwise would have and thereby worked to the prejudice of the other bidders who did not deviate from the single unit pricing scheme of the IFB schedule. Under these circumstances, we agree with the agency's view that

²We do not agree with Valix's contention that the agency's caution against deviating from the bidding scheme applies only to the requirement that firms bid on the full quantities for both the base and the option years. As noted above, the IFB specifically states that "[a] less than complete bid on a line item or any other deviation from the bidding scheme may cause the bid to be judged nonresponsive." The phrase "any other deviation" clearly applies to deviations other than the failure to bid on all quantities required.

acceptance of the Valix bids would have been prejudicial to the other bidders. Therefore, we conclude that the agency properly rejected the Valix bids as nonresponsive. Copy Duplicating Prods., Inc., supra.

The protest is denied.



for James F. Hinchman
General Counsel