



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

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B-178456

July 24, 1973

Armor Technology Corporation  
135 East Railroad Avenue  
Monrovia, California 91016

Attention: Mr. Don B. Kates  
Executive Vice President

Gentlemen:

Reference is made to your letters of April 26 and June 19, 1973, with enclosures, protesting against the award of a contract to any other firm under invitation for bids (IFB) DAAH03-73-B-0417, issued by the United States Army Missile Command, Redstone Arsenal, Alabama.

The IFB, issued on February 12, 1973, was for the procurement of 275 TOW tripod mounts, APN 1-224837, for a single-year program or 2,384 TOW tripod mounts for a 5-year program. The multiyear requirements are 275, 623, 562, 552 and 372 units for fiscal years 1973 through 1977, respectively. The facesheet of the IFB (standard form 33) contained the standard clause indicating that the bidder offered to furnish any or all items upon which prices are offered, at the price set opposite each item. Also, under section D-7 of the IFB bidders were required to bid, except for "NSP" data requirements, on each line item including option quantities, for the first and multi-year program requirements. Paragraph 3 of subsection C-37 also provided that "Bidders must bid on each quantity specified on every line of Section B except data requirements which may be listed as NSP."

The IFB was issued to 53 prospective bidders, nine of which submitted bids. The bids were opened on March 14, 1973, at which time it was determined that while your firm submitted a bid for both the single-year and multiyear portions of the IFB, it failed to provide prices for all of the line items within the bid. The line items on which prices were omitted were item 0002, first article requirement of two units in the single-year portion of the IFB; item 0007, first article requirement of two units in the multiyear portion of the IFB; and item 0008, alternate offer of a production quantity of 275 units, provided first article is waived.

Immediately after bid opening a representative of your firm advised Government officials supervising the bid opening that your

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firm's bid contained a mistake in that your typist had inadvertently omitted the prices mentioned above and that you had intended a price of \$632.64 for item 0002 and a price of \$603.64 for items 0007 and 0008. By teletype message of March 14, 1973, you advised the contracting officer that your bid for item 0008 was \$603.64 and you requested that your bid be amended as of date of submission to include this price. However, by letter dated April 11, 1973, the contracting officer determined your bid to be nonresponsive; there followed your initial protest of April 18, 1973, to our Office.

It is your contention that since the unit price bid for both item 0001, for 273 production units, and item 0003, for 275 production units if the first article requirement is waived, is \$632.64 per unit, it is apparent that you intended to bid a uniform price of \$632.64 for all of the units, including those covered by item 0002. In this regard your counsel argues that item 0002, entitled "First Article 513.A4031 .01.D1.02 (Same as 0001)," was answered: "Quantity 273"; "Unit, ea" and that it could be implied from the legend "(Same as 0001)" that the unit price of item 0002 was the same as the unit price of item 0001. Thus, he argues that repetition of the unit price in 0002 was unnecessary especially in light of the provisions of C-31 of part I wherein it states, in pertinent part, that "Bidders who fail to bid on all items (0001, 0002 and 0003) may cause their bid to be considered non-responsive." Your counsel reasons that under C-31, only a bidder who failed to bid on all of the three items "may cause their bid to be considered non-responsive"; and, therefore, a bid which sets forth an expressed unit price as to 0001 and 0003, is not nonresponsive because expressly 0002 was provided to be and would be deemed to be the "(Same as 0001)." The same reasoning is also applied to item 0007, the first article requirement of two units in the multi-year portion of the IFB.

Regarding item 0008, you contend that there can be no question but that you intended to bid a unit price of \$603.64 because of (1) your uniform pattern of bidding the same unit price for each unit under the multiyear portion of the IFB, (2) the used pro bid calculations and records demonstrating that such unit price was intended, and (3) page 18 of the IFB, under "CAUTION" states that the unit price quoted for items 0010, 0012, 0014, 0016 and 0018, on all of which you bid a unit price of \$603.64, "Must Not Exceed" the unit price quoted for production quantities. Item 0008 is a production quantity. Also, the "CAUTION" note states that "Bidder must bid on each Incremental Option specified for Items 0005, 0010, 0012, 0014, 0016 and 0018 or their bid will be rejected as non-responsive." It is argued by your counsel that since your firm did bid on each of the above increments, your bid could not be rejected as being nonresponsive. He further

argues that since items 0007 and 0008 were not included among those items specified in the "CAUTION" note, failure to include a price for these items would not render your bid nonresponsive.

Your counsel also urges that in the event the clarification of your bid, at the time of bid opening, is considered to be a modification of your bid, your bid should be considered pursuant to the provision of section "C," paragraph 8. Section "C," paragraph 8, states, in pertinent part, that "a modification of an offer which makes the terms of an otherwise successful offer more favorable to the Government will be considered at any time it is received and may thereafter be accepted." Finally, counsel urges the Government to waive the failure to include prices for items 0002, 0007 and 0008 as minor informalities or irregularities.

It is a fundamental rule of the competitive bid system that in order to be considered for an award a bid must comply in all material respects with the IFB at opening. 46 Comp. Gen. 434, 435 (1966). The bidder cannot add to or modify the bid after opening to make the bid comply with the IFB, and it does not matter whether an error is due to inadvertence, mistake or otherwise. B-161950, November 2, 1961. The question of responsiveness of a bid is for determination upon the basis of the bid as submitted and it is not proper to consider the reasons for nonresponsiveness. B-148701, June 27, 1962.

A bid is generally regarded as nonresponsive on its face for failure to include a price on every item as required by the IFB and may not be corrected. B-176254, September 1, 1972; B-173243, July 12, 1971, B-165769, January 21, 1969. We have also held that requirements for first article approval were material portions of the bid and a bid was nonresponsive where the contractor failed to bid on first article. B-157529, November 24, 1965. The rationale for these decisions is that where a bidder fails to submit a price for an item, he generally cannot be said to be obligated to perform that service as part of the other services for which prices were submitted. B-17680, October 6, 1970; B-129351, October 9, 1956.

To promulgate a rule which would allow bidders to correct a price omission after an allegation of mistake in bid would generally grant the bidder an option to explain after opening whether his intent was to perform or not perform the work for which the prices were originally omitted. B-176254, supra. To extend this option would in effect be tantamount to granting the opportunity to submit a new bid. B-177368, March 23, 1973, and cases cited therein. We have, therefore, held that an allegation of error is proper for consideration only where the bid is responsive and otherwise proper for acceptance.

40 Comp. Gen. 432, 435 (1961); 38 id. 819, 821 (1959). Although, in the present case, the Government could effect savings by allowing correction of a nonresponsive bid, the many decisions holding that a nonresponsive bid may not be corrected are manifestations of the principle that it is more in the interest of the Government to maintain integrity in the competitive bid system than it is to obtain a monetary gain in an individual award. B-161628, supra.

Applying the above rules to the present case, it is clearly indicated, at least in two instances, that your bid did not comply in all material respects with the IFB, i.e., it failed to include a price for every item and to bid on the first articles. Therefore, we would be unable to conclude that the determination that your bid was non-responsive was improper. Moreover, if your bid is nonresponsive, the mistakes alleged by you could not be considered. Also, it should be pointed out that these omissions could not be waived as minor informalities or irregularities since we have held that a failure to quote a price constitutes a material deviation which may not be waived. 41 Comp. Gen. 412 (1961); 50 id. 852 (1971). Regarding your counsel's urging that the clarification of your bid, at the time of bid opening, be considered as a modification of your bid which could be accepted under section "C," paragraph 8, quoted above, the Government will only accept an offer which improves on the terms of a successful offer and a nonresponsive bid does not constitute an offer which may properly be accepted. See B-148701, supra, and B-161620, supra.

However, our Office has recognized a very limited exception to the above rules. Even though a bidder fails to submit a price for an item in a bid, that omission can be corrected if the bid, as submitted, indicates not only the possibility of error but also the exact nature of the error and the amount intended. The rationale for this exception is that where the consistency of the pricing pattern in the bid documents establishes both the existence of the error and the bid actually intended, to hold that the bid is nonresponsive would be to convert what appears to be an obvious clerical error of omission to a matter of nonresponsiveness. B-177368, supra.

Applying this exception to the present case, it is apparent that there exists a sufficient pattern to establish your intended bid price for item 0008, since paragraph 5 of subsection C-37, page 13, of the IFB did provide that the unit price for each item in the multiyear requirement shall be the same for all program years and you did bid \$603.64 for each program year except the omitted first year program (item 0008). However, no pattern exists with respect to items 0002 and 0007 which would establish what you intended to bid for these

items. Concerning your contention that since your bid price for items 0001 and 0003 was \$632.64 it should have been apparent that you intended the same bid price for item 0002, we note that five of the seven bidders for the single-year portion of the IFB bid higher prices for first articles than for the production quantities. Thus, it would appear to be impossible to determine your intended bid price for either item 0002 or item 0007 from the information contained in your bid. On the contrary, you would have an option of either not furnishing the first article units or furnishing them at any price up to a price level where you would displace the next low bidder.

In regard to your counsel's contention that it could be implied from the legend "(Same as 0001)," in the column of subsection E-1, part II, of the IFB entitled "Supplies/Services," that the intended bid price for item 0002 was the same as 0001, it is clear that the words "(Same as 0001)" refer to the description rather than the price of item 0001. To accept your counsel's interpretation of what these words mean would render the whole IFB meaningless since the IFB is set up to encourage a decrease in the unit price where there is an increase in quantity. This could not be done if the items covering the production and option quantities under the multiyear portion of the IFB, all of which contain the legend "(Same as 0001)," were to be priced the same as 0001. For that matter, it does not appear that you interpreted these words in that manner since your price for the multiyear quantities is less than the single-year price. Of course, if all of the line items are the same, the method of evaluation set out in paragraph D-6 of the IFB is meaningless. Paragraph D-6 provides that bids will be evaluated by determining the lowest overall cost to the Government for both alternatives, the multiyear and the first year only, and by comparing the cost of buying the total requirement under a multiyear procurement with the cost of buying the total requirement in successive independent procurements.

In regard to items 0007 and 0008, your counsel also argues that the language in the "CAUTION" note to the effect that the bidder must bid on each increment of the option quantities under items 0005, 0010, 0012, 0014, 0016 and 0018 or have its bid rejected as nonresponsive meant that your bid could not be rejected as nonresponsive, since you had bid on each increment and items 0007 and 0008 were not listed. It would appear that these cautionary words refer strictly to the option quantities since paragraph 6 of subsection C-37 states that "the contractor will be disqualified if a no bid is submitted for the option quantities listed in the Schedule." In view of the fact that neither item 0007 nor item 0008 had option quantities, there was no necessity to list them. Also, it should be pointed out that if a bidder was a prior producer eligible to have the first article waived, there would be no need or requirement for such a bidder to bid on

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item 0007. However, this is not true in your case since you are not a prior producer eligible to have the first article waived.

For the above reasons, your protest is denied.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General  
of the United States