



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20543

B-178386

AUG 16 1973

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Attention: Leonard A. Sacks, Esq.

Gentlemen:

Reference is made to your letter of June 28, 1973, requesting on behalf of Central Data Processing, Inc., that we reconsider our decision B-178386 of June 25, 1973, wherein we held that consideration of the low bid of the SDA Corporation for award would be proper notwithstanding that firm's failure to submit prices on the indefinite quantity emergency schedules.

You believe this decision to be erroneous for several reasons. First, the cover page of the invitation instructed bidders that in order for a bid to be found responsive the bidder would have to "fill in the pricing information (both unit price and dollar amount) for all procurable items detailed in Section E." Also in this regard, paragraph 2-301(c) of the Armed Services Procurement Regulation (ASPR) entitled "Responsiveness of Bids," provides that "Bids should be filled out, executed, and submitted in accordance with the instructions which are contained in the invitation for bids." SDA, you observe did not strictly comply with these directives. Second, you see no basis for ignoring such failure and allowing correction of this deficiency. You note that ASPR 2-405, which provides for waiver of minor informalities or irregularities in bid " \* \* \* having no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured \* \* \*," does not include the omission of a unit price in its itemization of examples of what might be considered for correction. In this case, you contend, deletion of unit prices for the emergency schedules affects both price and delivery or performance. A bidder deleting this item could not be required to perform this service or alternately could substitute any price, thereby materially altering the actual total price bid.

Alternately, if 51 Comp. Gen. 528 (1972) is deemed to control the instant case, you believe that the invitation does not provide for the

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full and free competition among bidders envisioned by 41 U.S.C. 253 and that the invitation should be canceled and readvertised. You note in this respect, with emphasis upon the word "method," that ASPR 2-301 provides that:

"(a) To be considered for award, a bid must comply in all material respects with the invitation for bids so that, both as to the method and timeliness of submission and as to the substance of any resulting contract, all bidders may stand on an equal footing and the integrity of the formal advertising system may be maintained."

It is also your position that to insure full and free competition the procurement activity should have provided the bidders with available data regarding use of the emergency schedules under past contracts. SDA had this data, you contend, inasmuch as it was the incumbent contractor. In support of your position you cite 47 Comp. Gen. 272, 274 (1964), which states as follows:

" \* \* \* By using estimated quantities for bid evaluation different from actual anticipated needs, the possibility arises that a bidder may be found low on evaluation who is not the lowest bidder on the real requirements, or the best estimate thereof. 42 Comp. Gen. 257, 260."

As regards the fact that the invitation required submission of prices for all procurable items, it was our conclusion that notwithstanding this language failure to submit prices on the emergency schedules was not material enough a deviation under the circumstances to require a rejection of the bid as nonresponsive. We reached this conclusion because prices submitted on the emergency schedules were not to be considered in the evaluation of bids and, therefore, were in no way determinative as to which bidder would receive award of the contract. Reference to ASPR 2-405 was, and still is, unnecessary because the contract awarded EDA would cover only those items upon which it submitted bid prices. SDA did submit bid prices upon all items required for award evaluation.

Relative to your contention that the invitation did not provide for full and free competition, you cite ASPR 2-301, emphasizing (herein the word "method," We believe that the portion of that paragraph referring to the method of bid submission refers to the physical manner in which a bid is submitted, e.g., submission by means of the bid form, by means of a telegram, etc. The appropriate portion of that paragraph in this instance is rather that which provides that a bid must comply in all material respects as to the substance of any contract resulting from the invitation.

for bids. In this regard, our original conclusion was, of necessity, based upon the determination that the failure to bid upon the emergency schedules was not of sufficient materiality to interfere with assurance that full and free competition had been achieved. Further, we believe that in accordance with the provisions of that paragraph all bidders at all times stood on equal footing in the procurement. All bidders knew that the evaluation to determine the low bid would in no way involve emergency schedule prices. While we have previously stated that the award to SDA will not comprise any of the possible emergency schedules, we note that SDA could have bid extremely high prices on the original invitation so as to compensate for below normal prices quoted on those items included in the evaluation. Such would not have precluded an award to SDA. Nor would Central Data have been stopped from receiving award under the evaluation criteria had it bid in such a manner.

Finally, your contention that the procurement activity should have provided all bidders with data regarding work on prior contracts under the emergency schedules will not be considered since it was untimely raised. See 4 CFR 20.2.

Accordingly, our decision B-178386 of June 25, 1973, is affirmed.

Sincerely yours,

Paul S. Deabling

For the Comptroller General  
of the United States