



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Connecticut Laminating Company, Inc.

File: B-274949.2

Date: December 13, 1999

Steven M. Snow for the protester.

Drew Spalding, Esq., Government Printing Office, for the agency.

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DIGEST

1. Agency determination to permit bidder to correct a mistake in its low bid prior to award was proper where the agency reasonably determined that clear and convincing evidence established the existence of the mistake and the intended bid price, even though the bidder did not submit workpapers showing how it prepared its bid but only a declaration explaining how the mistake was made and the intended bid.
 2. Bid which did not include any reference to a bid acceptance period should be construed to be open for a reasonable period of time and is acceptable where the solicitation, issued by the Government Printing Office, did not require any minimum bid acceptance period.
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DECISION

Connecticut Laminating Company, Inc. protests the intended award of a contract to General Binding Corporation (GBC) under solicitation No. B296-S, issued by the Government Printing Office (GPO). Connecticut Laminating contends that the bid submitted by GBC in response to the solicitation should have been rejected by the agency as nonresponsive and that the agency improperly permitted GBC to make an upward correction to its bid price.

We deny the protest.

The solicitation sought bids for the production and supply of identification card components. The solicitation included a "schedule of prices," which contained two line items; one for "cardstock" and another for "laminated sleeve." Solicitation at 17.

Prices were requested for each of these line items for “makeready and/or setup” and “running per 1,000 copies.” Id. The solicitation informed bidders that in preparing their bids, they were to complete the schedule of prices by inserting prices or NC (no charge) for the four items of work requested. Id. The solicitation stated that the lowest bid would be determined by multiplying the prices offered by the agency’s estimate that during each year of the contract it would order 20 cardstock and 20 laminate sleeve “makeready and/or setup,” and 5,000 cardstock and 5,000 laminate sleeve production runs. Id. at 15.

The solicitation’s instructions for bid submission required bidders to fill out the schedule of prices and to submit signed copies of the completed “Schedule of Prices . . . or copies of the GPO Form 910 ‘Bid’ form” to the agency. Id. at 17. The solicitation package did not, however, include a Form 910 for the bidders to complete. The solicitation added that bids could be submitted by facsimile machine, and that bid opening would be at 11 a.m. on August 23, 1999. Id. at 1.

The agency received three bids by the time set for bid opening. Agency Report, Tab C, Abstract of Bids. GBC submitted its initial bid, comprised of a cover sheet identifying the solicitation and a signed and completed bid schedule, by facsimile that was received by the agency at 10:53 a.m. on August 23. GBC’s bid included entries of “NC” for the makeready or set up work, and prices of \$170 and \$200 for the cardstock and laminate sleeve production run line items, respectively, for a total bid of \$1,850,000. Agency Memorandum of Law, Oct. 28, 1999, at 4; Agency Report, Tab K, GBC Initial Bid. At 10:59 a.m., the agency received a “revised” bid from GBC, which differed from GBC’s initial bid in that the prices for each of the production run line items were listed as \$17 and \$20, for a total bid of \$185,000. Agency Memorandum of Law, Oct. 28, 1999, at 4; Agency Report, Tab B, GBC’s Revised Bid. GBC’s bids did not include a Form 910. Connecticut Laminating’s bid, comprised of a completed schedule of prices and Form 910, totaled \$1,899,000, and the third bid totaled \$2,100,000. Agency Report, Tab C, Abstract of Bids.

The agency contacted GBC by telephone on August 25 because it believed that GBC’s revised bid was in error. Agency Report, Tab E, Memorandum from Contracting Officer to Chairman, Contract Review Board 1 (Sept. 27, 1999). GBC responded by letter dated August 26, informing the agency that in its “haste” it had “managed . . . to miscount the decimals the second time around on our cost to the 1000 piece offer” and that its initial bid price “is the one that stands.” Agency Report, Tab D, Letter from GBC to GPO 1 (Aug. 26, 1999). The letter added by way of explanation that “[s]hortly after faxing the bid, [GBC] did, however, call [GPO] in the Bid Room, telling [GPO] about the erroneous revision.” Id. The contracting officer subsequently requested and received a declaration from GBC setting forth in more detail the sequence of events that led to the mistake in preparing the revised bid. Agency Report, Tab E, attach., Affidavit of the Preparer of GBC’s Bid. The contracting officer concluded that there was clear and convincing evidence establishing both the existence of the mistake in GBC’s bid and the bid actually intended, and recommended that GBC be awarded the contract at its initial and

corrected bid price of \$1,850,000. Agency Report, Tab E, Memorandum from Contracting Officer to Chairman, Contract Review Board 2 (Sept. 27, 1999).

Connecticut Laminating argues that, contrary to GPO's view, "[t]here is no clear and convincing evidence of a mistake" in GBC's bid, and that the agency improperly permitted GBC to upwardly correct its revised bid to the prices set forth in its initial bid and should instead have allowed GBC to withdraw its bid. Protester's Comments, Oct. 18, 1999, at 6-7.

The GPO, as a legislative branch agency, is not subject to the Federal Acquisition Regulation (FAR), but follows its Printing Procurement Regulations in conducting its procurements. Standard Register Co., B-260426, June 16, 1995, 95-2 CPD ¶ 120 at 2. The GPO provisions which govern the correction of pre-award mistakes, however, are virtually identical to the FAR rules. In this regard, the GPO regulations generally provide that the contracting officer may grant a bidder's pre-award request to correct a mistaken bid where "clear and convincing evidence establishes both the existence of the mistake and the bid actually intended." See Printing Procurement Regulations, GPO Publication 305.3 (Rev. 5-99), Ch. XII, § 6(3). We treat the question of whether the evidence of the mistake and the bid intended meets the clear and convincing standard as a question of fact, and thus will not question an agency's decision in this regard unless it lacks a reasonable basis. Standard Register Co., supra.

Here, based on the record considered in its entirety, we cannot find the agency's determination to permit the upward correction of GBC's bid to be unreasonable.

Specifically, at the time of bid opening, the agency had in hand an initial bid from GBC of \$1,850,000, which was relatively close in price to the other bids received by the agency, and GBC's "revised" bid of \$185,000. Given the discrepancy between GBC's revised bid and the other bids received, we agree with the agency's determination that GBC's revised bid appeared to be in error. In this regard, we also note that shortly after bid opening, GBC contacted the agency by calling the room at which bid opening was conducted, and informed the agency that its revised bid was in error.

Next, as explained by GBC and readily discernable by reviewing the bids themselves, GBC's initial and corrected bids differ from the revised bid only in that GBC shifted the decimal point in each of its revised prices one place to the left, thus reducing GBC's bid price by a factor of 10. Given the sequence of events, including the agency's receipt of an initial bid reflecting the correct bid prices and GBC's recognition of its mistake and telephone call to the agency shortly after bid opening, as well as the relatively obvious nature of the mistake and the intended bid, that is, the misplacement of a decimal point and the corresponding reduction of the bid by a factor of 10, and GBC's submission of a declaration explaining its mistake, we cannot find that the agency acted unreasonably in permitting the upward correction of GBC's bid. While the decisions of our Office generally provide that workpapers may

constitute clear and convincing evidence, so as to allow bid correction, if they show the existence of a mistake and the intended bid, are in good order, and are not contradicted by other evidence, Standard Register Co., *supra*, at 2-3, an explanatory letter without workpapers has also been found to constitute clear and convincing evidence in appropriate circumstances.¹ Accent Gen., Inc., B-192058, Sept. 21, 1978, 78-2 CPD ¶ 215 at 5.

Connecticut Laminating also protests that GBC's bid should be rejected by the agency as nonresponsive because GBC failed to submit a completed GPO Form 910 with its bid.² Connecticut Laminating argues that submission of the Form 910 is required because it "is the document which binds a bidder to the certifications on the reverse of the form." Protest at 1.

The solicitation expressly permitted the submission of facsimile bids, and requested that bidders submitting their bids by facsimile "[r]efer to Facsimile Bids in Solicitation Provisions of GPO Contract Terms, GPO Publication 310.2." Solicitation at 1. GPO Publication 310.2, among other things, sets forth the representations and certifications from the Form 910, and requests that bidders "[s]tate in [their] facsimile . . . any exception to the certifications." GPO Publications 310.2 at 5. This provision adds that the "[s]ubmission of your bid without statement of exception to the certifications shall constitute certification of the five items" required. Accordingly, GBC, by submitting a facsimile bid that did not contain any statement taking exception to the required certifications, is bound to perform in accordance with the required certifications.

Connecticut Laminating points out that the Form 910 provides for a bid acceptance period, and argues that because GBC's bid did not include a Form 910 or otherwise provide a bid acceptance period, GBC "could have rescinded its bid on any day after bid opening" and GBC's bid should therefore be rejected as nonresponsive. Protester's Supplemental Comments at 2.

The GPO Form 910 includes the following notation regarding the bid's acceptance period:

[T]he undersigned agrees, if this bid is accepted within ____ calendar days (60 calendar days unless a different period is inserted by the

¹ Connecticut Laminating also contends that GPO provided inappropriate assistance to GBC when it advised that firm that if it withdrew its revised bid, its initial bid would not be considered. Protester's Comments at 7 n.5; Protester's Supplemental Comments, Nov. 1, 1999, at 4-5. We find nothing improper in this communication.

² Contrary to Connecticut Laminating contention, this GPO solicitation did not require the submission of a Form 910, but required the submission of the schedule of prices "or" a Form 910. Solicitation at 17.

bidder) from the date of receipt of bids, to furnish the specified items at the price set forth opposite each item, delivered at the designated point(s), in exact accordance with specifications.

Notice: Failure to provide a 60 day bid acceptance period may result in expiration of your bid prior to award.

As indicated, the solicitation was unusual in that it did not contain a mandatory minimum bid acceptance period nor require bidders to agree to a specific bid acceptance period. Bidders were thus free to offer a period shorter than the automatic 60-day period stated in the solicitation. Mid Atlantic Label, Inc., B-234120, Mar. 31, 1989, 89-1 CPD ¶ 338 at 2. Here, although GBC's bid did not include a Form 910 or otherwise reference any bid acceptance period, its bid should be construed to be open for a reasonable period. International Graphics, Div. of Moore Bus. Forms, Inc. v. United States, 4 Cl. Ct. 515, 520 n.9 (1984) (interpreting bid containing no specific bid acceptance period or a Form 910 on a GPO sealed bid procurement). Thus, GBC's bid remained open for a reasonable period and it could not rescind its bid on any day after bid opening, and its bid could not be rejected for failing to include a Form 910.

Connecticut Laminating finally argues that GBC's bid should be rejected because GBC does not intend to adhere to the subcontracting limitations set forth in the solicitation, or provide a product that conforms to the solicitation's specifications. Protester's Supplemental Comments, Nov. 1, 1999, at 5-10.

GBC's bid did not take exception to any of the solicitation's requirements. Whether GBC is able to comply with the subcontracting limitations set forth in the solicitation or provide a product that conforms to the specifications is a question bearing on GBC's responsibility. See Chandler Marketing Group, B-247184, May 11, 1992, 92-1 CPD ¶ 434 at 3; Lebanon Publishing Co., Inc., B-243149, Apr. 24, 1991, 91-1 CPD ¶ 406 at 2. A determination as to whether a prospective awardee is responsible is based largely on subjective judgments, which generally are not susceptible to reasoned review. Thus, we will not review a contracting officer's affirmative determination of responsibility absent a showing of fraud or bad faith on the part of procuring officials, or that definitive responsibility criteria in the solicitation have not been met. 4 C.F.R. § 21.5(c); Lebanon Publishing Co., Inc., *supra*. Here, there are no allegations of fraud or bad faith. Additionally, whether GBC actually complies with the subcontracting limitations set forth in the solicitation or provides a product that conforms to the specifications are matters of contract administration not for our

review. 4 C.F.R. § 21.5(a) (1999); Sonic Dry Clean, Inc., B-275929, Apr. 21, 1997, 97-1 CPD ¶ 145 at 2 n.1; Jasper Painting Serv., Inc., B-251092, Mar. 4, 1993, 93-1 CPD ¶ 204 at 6. We therefore will not consider the protester's arguments here.

The protest is denied.

Comptroller General
of the United States