

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

FILE: B-186750

DATE: September 21, 1976

MATTER OF: Southeastern Metal Fabrication

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97998**DIGEST:**

Bidder's insertion of document containing escalation clause into bid package rendered bid nonresponsive because bidder has not offered firm fixed price. Bidder contends that document was included inadvertently and that facts show no intention to use clause. However, responsiveness of bid is determined from face of bid itself at time of bid opening and to allow bidder opportunity to explain bid after opening or to delete items from bid is tantamount to permitting submission of second bid.

Invitation for bids (IFB) No. DOT-CG-62203 was issued by the United States Coast Guard (Coast Guard) for the fabrication and assembly of daytank assemblies and assembly spares to be delivered to the United States Coast Guard Supply Center, Brooklyn, New York. The bid submitted by Southeastern Metal Fabrication (Southeastern) was the lowest of the ten bids received by the time of bid opening on April 22, 1976. A preaward survey of Southeastern was conducted on May 26, 1976, and the survey team recommended that award be made to Southeastern. However, on or about June 15, 1976, the contracting officer in reviewing the Southeastern file found a single sheet of paper with the company letterhead which was undated and unsigned and bore the following typewritten statement in capital letters:

"ALL QUOTES ARE BASED ON CURRENT PRICES,
ANY INCREASES IN PRICES WILL BE REFLECTED
IN A COST INCREASE ON THAT PARTICULAR ITEM."

The contracting officer determined that the statement qualified the price of the bid and rendered it nonresponsive. Therefore, he rejected the Southeastern bid and ruled that the document could not be withdrawn.

Southeastern protested the contracting officer's determination on the basis that the document found its way into the bid envelope accidentally and there is no relationship between the "extraneous"

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document and Southeastern's bid. The protester contends that the document should have been disregarded. Award has been withheld pending our decision.

Southeastern had submitted in its bid envelope three separately stapled and identical copies of its bid, together with one set of required certifications. The extraneous document was also in the sealed envelope. The affidavits of the Southeastern employees involved in the preparation and submission of the bid are to the effect that no one at Southeastern had any knowledge that the document had accompanied the bid until the bidder was notified by the Coast Guard. The employees state that the escalation clause which is normally used in commercial business was inadvertently included in the bid envelope when the bid documents were placed in the envelope and this "extraneous" document was never intended to be a part of the bid.

The protester contends that if a letterhead is unsigned and unaccompanied by other material indicating an intent to be bound it does not form a part of the bid, citing our decisions in Edmund Leising Building Contractor, Inc., B-184405, October 29, 1975, 75-2 CPD 263; B-177871, May 14, 1973; and B-153112, February 13, 1964. However, the cited decisions relate only to the requirement that the bid itself be signed: they do not state any requirement that every document submitted with a bid must be signed. Southeastern also cites B-156416, May 13, 1965, in support of its contention that the extraneous document should not be considered part of its bid. However, in the cited case the escalation clause appeared in descriptive literature and related specifically to the prices of assemblies and devices, not to the price of the complete system offered by the bidder. Therefore, the bid was not qualified by the escalation clause. In the instant case, however, the clause applied to "all quotes".

We have consistently held that extraneous documents submitted with a bid must be considered part of the bid. J. A. Wynne Co., Inc., B-181807, November 18, 1974, 74-2 CPD 268. In the instant case, the protester argues that it did not need an escalation clause because of the relatively short delivery schedule. However, the fact remains that the protester included the document in its bid envelope and the contracting officer regarded the escalation clause as part of Southeastern's proposed contract. If the contracting officer had then accepted the Southeastern bid, he would have run the risk that a binding contract would have been created containing the terms on the letterhead.

The contracting officer's rejection of Southeastern's bid was in accordance with the Federal Procurement Regulations (FPR) §

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1-2.404-2(b)(3) (1964 ed. amend. 121) which provides for the rejection of bids in which the bidder states a price but qualifies that price as being subject to "price in effect at time of delivery." Also Article VI of the IFB specifically put the protester on notice that:

"Bids submitted subject to conditions in conflict with conditions of the standard Government contract form whether preprinted on bidder's form normally used in commercial business or otherwise included, shall be considered non-responsive."

Since the document was submitted with Southeastern's bid, it must be considered as part of its offer under the invitation as issued. The fact that there was no cross reference between the extraneous document and the other bid documents does not cure the specific deviation. Even though Southeastern may have actually intended to be bound by all the terms and conditions of the IFB, the crux of the matter is not whether the bidder intends to be bound but whether the intention is apparent from the bid as submitted. Concerning the protester's explanation that the insertion of the escalation clause was the result of an inadvertent error, it is the well established position of our Office that questions involving the interpretation of a bid must be determined by examination of the bid itself without reference to extraneous explanations submitted by the bidder after bid opening. Ira Gelber Food Services, Inc., 55 Comp. Gen. 599, 601 (1975), 75-2 CPD 415. Allowing consideration of such explanations submitted after bid opening would confer on a bidder the option of accepting an award by presenting an interpretation of the matter in question which would make his bid the lowest, responsive offer for the procurement, or electing not to present such interpretation and avoiding eligibility for award. Consideration of such explanations would be unfair to those bidders who do not seek to clarify their offers after bid opening. In view thereof, the contracting officer properly determined the responsiveness of Southeastern's bid by restricting his analysis to the contents of its bid.

The protester contends that since the contracting officer overlooked the escalation clause until two months after bid opening that it was reasonable for the bidder to have overlooked the same piece of paper. However, once the document was discovered, the Coast Guard was required to regard the escalation clause as part of the bid and had no other choice under the FPR than to reject the bid as nonresponsive.

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For the foregoing reasons, we find that the contracting officer properly rejected the Southeastern bid as nonresponsive. Therefore, the protest is denied.

Sincerely yours,

Robert K. ...
Acting Comptroller General
of the United States