

[Protest Against Bid Rejection] 13540 PL-II
712149

DECISION



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

FILE: B-198294

DATE: April 24, 1980

MATTER OF: Re Con Paving, Inc.

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DIGEST:

1. Bid containing letter stating that bid is subject to a price adjustment that "could have to be made" may reasonably be read as taking exception to solicitation requirement for submission of firm-fixed price and thus is nonresponsive.
2. When it is clear from protester's submission that protest is without legal merit, decision will be rendered without report from procuring agency or holding conference requested by protester.

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Re Con Paving, Inc. (Re Con) protests the rejection as nonresponsive by the Department of the Army of its bid submitted in response to Invitation for Bids (IFB) No. DABT35-80-B-0037 for paving repairs at Fort Dix, New Jersey.

Re Con's bid was determined to be nonresponsive based on an accompanying letter stating:

"The enclosed bid prices are based upon the current petroleum cost which is subject to a price increase as of August 31, 1980, at which time a price adjustment could have to be made." (Emphasis in original.)

In its protest to this Office Re Con contends that the letter accompanying the bid was not intended as a disclaimer or qualification of the bid. Rather, Re Con states, it merely was "advising of a condition existing in the marketplace" and serving notice that if an "unreasonable" increase in price of asphaltic oil occurred during the contract, it would file a "changed conditions" claim.

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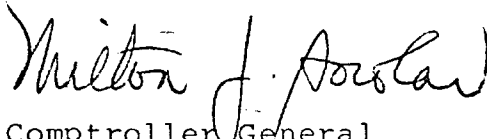
The question of the responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the requested items in total conformance with the items and specifications requirements of the invitation at a firm-fixed price. A bidder's intention must be determined from the bid itself (an accompanying letter being considered part of the bid) at the time of bid opening. Abbott Laboratories, B-183799, September 23, 1975, 75-2 CPD 171. Only material available at bid opening may be considered in making a responsiveness determination. Fisher-Klosterman, Inc., B-185106, March 9, 1976, 76-1 CPD 165.

Re Con's bid falls short of an unequivocal offer to provide the requested items at a firm-fixed price. Looking at the bid alone, we find unclear the meaning of Re Con's statement that after August 31, 1980, "a price adjustment could have to be made." It may be read, as Re Con contends, as simply advice that there was a possibility that a claim would be filed during contract performance. On the other hand, Re Con's statement that its bid was based upon "current" petroleum costs and its designation of a specific date after which there could be a price adjustment, could be read as a reservation of the right to increase its bid price at that time. In this connection, we have held that where a bidder qualified his bid for a firm fixed-price contract by providing for a change in the price if certain circumstances occur, the bid must be rejected as nonresponsive since the bidder has not offered a firm-fixed price. Joy Manufacturing Company, 54 Comp. Gen. 237 (1974), 74-2 CPD 183. Since Re Con's bid is reasonably susceptible to this interpretation, we think it was properly rejected as nonresponsive. We may not give effect to Re Con's explanation of the meaning of its bid after opening; such action would serve to undermine the integrity of the bidding system and cause overall harm to the system of competitive bidding despite the immediate advantage gained by the lower price in the particular procurement. United McGill Corporation and Lieb-Jackson, Inc., B-190418, February 10, 1978, 78-1 CPD 119.

Any supplier of services or goods from which a Government contractor must in turn procure in order to complete his Government contract may always raise prices during the duration of the Government contract unless bound otherwise by contract. However, this is a risk attending all bidders which they can estimate and provide for in arriving at their fixed prices. We have upheld the propriety of requiring bidders to estimate the cost of contract compliance and to bear the risks accompanying such compliance. Ronald Campbell Company, B-190837, April 24, 1978, 78-1 CPD 313.

Because we believe that it is clear from Re Con's initial submission to our Office that the protest is without legal merit, we have reached this decision without requesting a report from the procuring activity. Inflated Products Company, Inc., B-190877, May 11, 1978, 78-1 CPD 362. It follows that Re Con's request for a conference is denied.

The protest is summarily denied.


Acting Comptroller General
of the United States