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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20549

FILE: B-199419

DATE: July 21, 1980

MATTER OF: Cardox, Division of Chemetron Corporation

DIGEST:

1. Where protester's initial submission indicates protest is without legal merit, GAO will render decision on matter without requesting report from procuring agency.
2. Bid which deviated from material solicitation clause prescribing minimum order limitation is properly declared nonresponsive.
3. Where bid is declared nonresponsive because of amount stated for minimum order limitation, mistake in bid procedures are not applicable to correct alleged mistake in minimum order limitation amount.

Cardox, Division of Chemetron Corporation (Cardox) protests the General Services Administration's (GSA) rejection of its bid as nonresponsive under Invitation for Bids (IFB) No. 7CF-51957/J4/7AV, and GSA's subsequent refusal to permit a post-bid opening correction of an alleged mistake in bid which would have made Cardox's bid responsive.

In our opinion, this case falls within the ambit of our decisions which hold that where it is clear from the protester's initial submission that the protest is without legal merit, we will decide the matter on the basis of the protester's submission without requesting a report from the procuring agency pursuant to our Bid Protest Procedures, 4 C.F.R. § 20.3(c) (1980). See Fire & Technical Equipment Corp., B-192408, August 4, 1978, 78-2 CPD 91.

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[Protest Against Bid REJECTION]

The purpose of this procurement was the establishment of a Federal Supply Schedule for industrial gases. The IFB contained a provision entitled "Small Requirements" in which GSA prescribed a minimum dollar value of \$50.00 for orders to be issued under the resulting contracts. This provision further stated:

"If a bidder is willing to accept smaller orders than * * * [\$50.00], he may specify such smaller amount below. If bidder inserts a higher amount than * * * [\$50.00], his bid will be rejected as nonresponsive. The minimum acceptable order against a contract resulting from this solicitation is _____." (Emphasis Added.)

In the blank space, Cardox inserted the figure of \$150.00. In accordance with the underscored terms of the above-quoted clause, GSA declared Cardox non-responsive because Cardox's minimum acceptable order amount was higher than the \$50.00 figure prescribed by GSA. In this regard, it is a basic principle of Federal procurement law that, to be considered for award, a bid must comply in all material respects with the IFB so that all bidders will stand on an equal footing and so that the integrity of the competitive bidding system will be maintained. 41 Comp Gen. 721 (1962). Here, Cardox's bid clearly did not comply with the terms of the "Small Requirements" clause, which we consider to be a material provision, and therefore was properly declared nonresponsive.

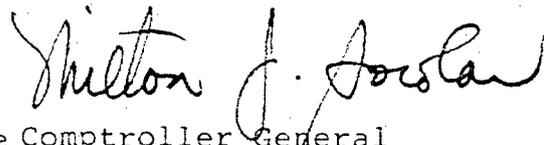
After learning that its bid had been rejected as nonresponsive, Cardox informed GSA that the \$150.00 figure was a typographical error and the figure was intended to be \$50.00. As evidence of its alleged mistake, Cardox submitted to GSA a handwritten copy of its solicitation which purported to show that a figure of \$50.00 was originally placed in the prescribed blank and was later mistyped as \$150.00 during preparation of the finalized submission to GSA. Additionally, Cardox provided GSA with copies of several other GSA contracts which included the "Small Requirements" clause in which Cardox had inserted a \$50.00 figure. Cardox then offered

to correct its bid to reflect the \$50.00 figure which would make the bid responsive. This offer was rejected by GSA.

We believe GSA acted properly in rejecting the Cardox offer to correct the alleged mistake because the Cardox bid was nonresponsive. While Cardox feels that GSA's determination of nonresponsiveness is of little consequence in the mistake in bid correction ruling, we have held that the mistake in bid correction procedures may not be used to correct a nonresponsive bid in order to make it responsive. General Electric Company, B-184873, May 4, 1976, 76-1 CPD 298. The responsiveness of the Cardox bid must be determined from the bid itself without reference to extraneous aids or explanations regarding Cardox's intentions. Pauli & Griffin Company, Inc., B-183797, March 16, 1976, 76-1 CPD 178.

To have permitted Cardox to correct its bid after bid opening and exposure of all bid prices would have been prejudicial to the fully responsive and responsible bidders and would have compromised the integrity of the competitive bidding system despite the immediate economic advantage which might accrue to the Government if Cardox were allowed to correct and receive award. While it may be that an error was made in Cardox's case, such error was in no way induced by the Government and the responsibility for the preparation and submission of its bid rested solely upon Cardox.

The protest is summarily denied.



For the Comptroller General
of the United States