

19252

**DECISION**



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

**FILE:** B-203497

**DATE:** August 24, 1981

**MATTER OF:** AM International, Inc., AM Micrographics  
Division

**DIGEST:**

1. Protest alleging low bid is nonresponsive, filed more than 10 working days after bid opening but before protester knew agency considered low bid responsive, is timely because protester was not required to file protest earlier since protest would have been speculative and defensive.
2. Bid--which includes current published prices lower than Federal Supply Schedule or commercial prices for supply items to operate equipment being purchased--is responsive to solicitation requirements.
3. Fact that bidder did not quote price for item not required by solicitation does not affect responsiveness.
4. Possible failure of low bidder to notify General Services Administration (GSA) of lower bid prices for items allegedly covered under bidder's Federal Supply Schedule contract is matter of contract administration for resolution by GSA, not GAO.

AM International, Inc., AM Micrographics Division (AMI), protests the proposed award of a contract to Canon U.S.A., Inc., Micrographics Division (Canon), for microfiche viewer/printers under invitation for bids (IFB) No. DLA400-81-B-1360 issued by the Defense Logistics Agency (DLA). AMI principally contends that Canon's low bid is nonresponsive because it does not include a price for dispersant and Canon did not submit "published" prices for paper and chemicals as required by the IFB because the prices submitted were not on the Federal Supply Schedule (FSS) or available commercially. In addition, AMI questions certain IFB provisions relating to bid evaluation.

116224

~~018213~~

We find the protest untimely filed in part and without merit in part.

The IFB states that award will be based on the lowest overall cost of purchasing the equipment and the cost of paper and chemicals required to produce 13,200 "full size prints." The cost of paper and chemicals is to be based on the manufacturers' current published prices. Bidders were to identify the paper and chemicals to be used and the manufacturer's unit list price and to warrant that the identified paper and chemicals will be available for sale to using activities of the Government for a period of 3 years following shipment of the equipment at prices which will not exceed the current published prices by more than 30 percent.

Initially, we note that AMI also protests the enforceability of the warranty requirement. However, this concerns an alleged impropriety in the solicitation apparent before bid opening which should have been, but was not, protested prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1981). Therefore, this aspect of AMI's protest is untimely presented for our consideration.

Both DLA and Canon contend that AMI's protest against Canon's bid is untimely because it was filed more than 10 working days after the bid opening from which AMI should have known the bases of its protest, citing 4 C.F.R. § 21.2(b)(2) (1981).

AMI representatives examined Canon's bid prices at the bid opening on April 10, 1981, and later obtained copies of Canon's bid under the Freedom of Information Act. AMI explains that while it was aware at bid opening of Canon's failure to include a price for dispersant, AMI did not protest the issue then because the firm did not know whether the contracting officer considered Canon's bid nonresponsive due to this alleged omission. AMI states that it did discover that Canon's bid prices were lower than its FSS prices for paper and chemicals in early April 1981, but it did not obtain Canon's commercial (dealer) price list until May 21, 1981. The protester asserts that its June 1 protest to our

Office was timely filed within 10 working days after AMI's receipt of Canon's commercial price list from which it learned that protest basis.

We do not agree with DLA and Canon that AMI's protest is untimely. A protester is not charged with knowledge of a basis of protest until the contracting agency conveys to the protester a position adverse to the protester's interest. The fact that AMI was aware that grounds of protest might exist shortly after bid opening did not require the firm to file a defensive protest. See Brandon Applied Systems, Inc., 57 Comp. Gen. 140, 144 (1977), 77-2 CPD 486. In the interim, AMI had the right to anticipate that DLA would comply with the IFB requirements in selecting the successful bidder. See Vydec, Inc., B-198275, August 5, 1980, 80-2 CPD 89. There is no evidence in the record that AMI was advised prior to filing its protest that DLA considered Canon's bid responsive. Therefore, AMI's protest before award was timely filed. See Peter Gordon Company, Inc., B-196370, July 18, 1980, 80-2 CPD 45; Werner-Herbison-Padgett, B-195956, January 23, 1980, 80-1 CPD 66.

The Government may consider cost factors other than bid price in determining the low evaluated bid if the solicitation so provides. Defense Acquisition Regulation § 2-201(a), section M(i) (Defense Acquisition Circular No. 76-20, September 17, 1979); Drexel Contract Furniture, B-180598, June 14, 1974, 74-1 CPD 324; 36 Comp. Gen. 380 (1956). Where the solicitation requires that bidders furnish data from which the Government can calculate the costs, over and above the bid price, we have held that a bid which includes sufficient information from which the contracting agency can conclude with reasonable certainty that the bid is the most advantageous to the Government is responsive. See W. A. Apple Manufacturing, Inc.--Reconsideration, B-183791, March 2, 1976, 76-1 CPD 143.

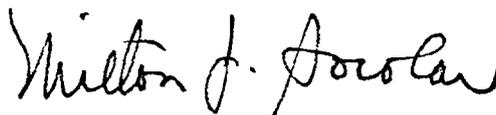
In our opinion, Canon's bid, which is low on the equipment and operating supplies, is clearly responsive to the IFB requirement for the submission of manufacturers' current published prices. The firm provided the requested prices in total conformance with the

terms and specifications of the invitation. J. Baranello and Sons, 58 Comp. Gen. 509, 514 (1979), 79-1 CPD 322. The IFB does not specify that either FSS or commercial list prices must be furnished. Canon, as the manufacturer, submitted prices for paper and chemicals, included a document indicating that the prices bid were current prices in effect on December 15, 1980, and took no exception in its bid to any of the IFB requirements. AMI's protest on this ground, therefore, is denied. We note that DLA reports that AMI also submitted prices lower than catalog prices for the operating supplies.

The fact that Canon did not include a price for dispersant does not render the bid nonresponsive because the IFB did not require either the use of dispersant or the insertion of a price for dispersant. AMI has not refuted this, and the protest on this issue is denied. We further note that AMI also did not quote a price for dispersant.

Finally, AMI's concern about whether Canon's bid prices constitute a price reduction which will affect Canon's FSS contract is not pertinent to the propriety of an award under this IFB. Whether Canon has notified the General Services Administration (GSA) of the bid prices is a matter for GSA to resolve in the administration of the FSS contract. See Sony Industries, B-197300, June 4, 1980, 80-1 CPD 382.

The protest is dismissed in part and denied in part.



Acting Comptroller General  
of the United States