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DECISION



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

FILE: E-204848

DATE: January 7, 1982

MATTER OF: Prime Computer, Inc.

DIGEST:

Bid which included restriction on release of price was properly rejected as nonresponsive, even where contracting officer ignored restriction and disclosed price at bid opening.

Prime Computer, Inc. (Prime), protests the rejection of its bid as nonresponsive to invitation for bids No. F41689-81-B-0043, issued by the Department of the Air Force, Randolph Air Force Base, Texas.

The protest is denied.

Prime's bid contained a legend restricting the public disclosure of its bid price. The contracting officer disclosed the price anyway, but also found Prime's bid to be nonresponsive as a result of the legend and rejected it. In doing so, the contracting officer apparently relied on our decision in Computer Network Corporation, 55 Comp. Gen. 445 (1975), 75-2 CPD 297, in which we upheld the rejection of a bid as nonresponsive because it was stamped "CONFIDENTIAL," and, thus, was in conflict with law and regulation requiring public disclosure of bid prices.

Prime admits that the restriction rendered its bid nonresponsive, but argues that the contracting officer's disclosure of its bid price cured the nonresponsiveness. According to Prime, our concern in Computer Network Corporation was that the restrictive legend gave the bidder the option, after bid opening, to accept or reject the award by removing or not removing the restriction. The protester contends that, by disclosing the price without its permission, the contracting officer took that option away from Prime, thus, alleviating the problem.

We disagree. In 1010 Incorporated of Alamogordo, B-204742, December 21, 1981, 81-2 CPD _____, we considered the same question that is presented here. We found that exposure of a restricted bid price by the contracting officer did not cure the bid's non-responsiveness, because the responsiveness of a bid must be determined at the time of bid opening. Additionally, a bidder who restricts disclosure of its price would still have the option, even if its price is exposed, to accept or reject award of a contract because its bid was conditioned on non-disclosure of its price. Therefore, the agency properly rejected Prime's bid.

Harvey D. Van Cleave
For the Comptroller General
of the United States