

**DECISION**

*Pellard*  
*11877-3*

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

FILE: B-205726

DATE: June 16, 1982

MATTER OF: Data Controls/North Inc.

**DIGEST:**

Bid on a solicitation for keypunch services was properly rejected as nonresponsive where an accompanying letter stated that bidder would adjust its price if the number of keystrokes specified for each type of card was less than the number actually required to perform the services. Although the Changes and Disputes clauses incorporated into solicitation and resulting contract provide for price adjustment if work required exceeds that specified, bidder here attempted to alter the process by announcing the formula by which the amount of the claim will be calculated prior to the submission of that claim.

Data Controls/North Inc. protests the Department of the Army's rejection of its bid as nonresponsive under Invitation for Bids (IFB) No. DAAD05-81-B-5098 for keypunch and verification services for the U.S. Army Adjutant General Publications Center, Baltimore, Maryland. The agency determined that a letter submitted with Data Controls' bid made it impossible to determine that firm's price. The protester contends that the letter did not qualify the bid but merely restated the IFB requirements. While we do not agree with the agency's reasons for determining the protester's bid nonresponsive, we agree with the agency's conclusion and deny the protest.

The IFB solicited unit and total prices for the services, equipment and facilities to keypunch and verify an estimated quantity of 4,800,000 Government supplied cards. The IFB at paragraph C.3.3, sections a. through f., described the types of cards which would be supplied

and the number of keystrokes needed to process each type of card. For example, section d, stated that an estimated quantity of 500-2000 cards (AGPC 193) per week were to be processed using 35 keystrokes per card. The number of keystrokes was not termed an estimate. Data Controls bid a unit price of \$.0296 per card and a total price of \$142,080 for the basic quantity.

The firm's bid include<sup>d</sup> a cover letter which stated:

"THE PRICE BID IS BASED ON THE SPECIFIED KEY-STROKES WITHIN THE BID PACKAGE. IF THESE FIGURES ARE NOT ACCURATE THE PRICE WILL BE ADJUSTED ACCORDING TO THE ACTUAL KEY STROKE AVERAGE.

THE PRICE INCLUDES KEY PUNCHING AND KEY VERIFYING; BASED ON INDUSTRY STANDARDS, THE DEFINITION OF A KEY STROKE IS:

KEY STROKE = ONE DEPRESSION OF A KEY."

The agency believes this letter qualifies Data Controls' bid by rendering its prices uncertain. First, the agency explains that each card may contain up to 80 "characters" and that for each "character" one keystroke is required to punch the card and usually another to verify the accuracy of the entry. It also states that in some instances one or more "punches" may be constant for a particular card and that in such cases these "punches" can be programmed to be done automatically, without individual keystrokes. According to the agency, the number of these constant "punches" depends on the particular operator and therefore it is not always possible to state that the number of "entries specified will be the same as the number of keystrokes actually required." The agency concludes from this that it was impossible for it to determine from Data Controls' bid, including the letter, whether that firm intended its bid prices to cover only the basic keypunch operation and to charge extra for verification or that both operations were covered by its prices. The solicitation schedule provided that the unit and total prices bid were to include both keypunching and verification.

We do not understand the relationship of the agency's explanation of the problems inherent in estimating the number of keystrokes needed to perform the keypunch operation and its difficulty interpreting whether Data Controls' bid

covered the verification function. The verification operation, it seems, is merely a reflection of the work required in keypunching. Data Controls' bid clearly stated that it included both verification and keypunching. The question raised by Data Controls' letter, we believe, only concerned the accuracy of the keystroke descriptions contained in the IFB.

Data Controls maintains that by its letter it was trying to protect itself against inaccurate keystroke designations in the specifications by stating that if those designations were not accurate its "PRICE WILL BE ADJUSTED ACCORDING TO THE ACTUAL KEYSTROKE AVERAGE." We agree with the protester's interpretation of its letter as concerning the number of keystrokes needed. Although we think the agency's position that the letter confused the bidder's intent to include the verification function in its bid price is incorrect, we agree with the agency's conclusion that Data Controls' bid was nonresponsive.

The question of responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the requested items in total conformance with the IFB's specifications. Free-Flow Packaging Corporation, B-204482, February 23, 1982, 82-1 CPD 162. A bidder's intention must be determined from all the bid documents (including a cover letter) at the time of bid opening. Free-Flow Packaging Corporation, supra. In this regard, we have held that where a bidder like Data Controls qualifies its bid to protect itself from future price changes or increases, and the total price cannot be determined from bid evaluation, the bid must be rejected as nonresponsive. Joy Manufacturing Corporation, 54 Comp. Gen. 237 (1974), 74-2 CPD 183.

Here, it could be argued that rather than qualify its price all Data Controls did by submitting its letter was to indicate to the agency that if the agency's specifications did not accurately reflect the amount of work needed and more work was actually required, the bidder would claim an equitable adjustment in its price, as it would be entitled to do under the Changes clause incorporated into the IFB and the resulting contract. This is not the case, however, as Data Controls' letter does not state that it will claim a price adjustment but that its "PRICE WILL BE ADJUSTED ACCORDING TO THE ACTUAL KEYSTROKE AVERAGE." This

language indicates that Data Controls intended to pre-determine the formula to be used in calculating any claimed equitable adjustment. This is inconsistent with the Changes and Disputes procedures which generally only permit an upward price adjustment after the contractor's claim is approved by the contracting officer or settled through the designated disputes procedure. The amount of that claim must be determined in accordance with this procedure not necessarily by any formula which the contractor announces prior to the submission of its claim.

Since all bidders must compete for contracts on an equal basis, no individual bidder can reserve rights or make alterations to the Changes or Disputes procedures that are not extended to all bidders. See Free-Flow Packaging Corporation, supra. Thus, Data Controls' use of the language that it will adjust its price according to the actual keystroke average renders its bid nonresponsive.

The protest is denied.

for *Milton J. Fowler*  
Comptroller General  
of the United States