

DECISION

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

FILE: B-209037

DATE: October 8, 1982

MATTER OF: National Mediation Board--Request for
Advance Decision

DIGEST:

1. Bidders may elect not to charge the Government for certain services, and when they have indicated that they are aware of and willing to commit themselves to furnishing the item in question--as by inserting a zero, "no charge," or dashes--the bid is responsive and the bidder may be considered for award.
2. In requirements contract, when exact quantities of items to be procured are not known, the solicitation must provide some basis for bidding, such as estimated quantities, and when future needs cannot be estimated, past orders may be listed instead.
3. When solicitation for requirements contract is defective due to failure to include estimates, but the Government's actual needs will be satisfied and other bidders will not be prejudiced by award, bid cancellation is not necessary and low bid may be accepted.
4. When bidder for reporting services will charge \$0 for original copies and is low regardless of number of additional copies ordered by the Government, GAO will not object to award, even though solicitation was deficient for failure to include estimates and provide for evaluating additional copy prices.

The National Mediation Board requests an advance decision as to whether it properly may accept the bid of Neal R. Gross and Co., Inc. for reporting and furnishing transcripts of oral hearings of Emergency Boards, Boards of Arbitration, and the National Mediation Board--all acting pursuant to the Railway Labor Act--during fiscal 1983. Gross has offered to furnish original transcripts to the Government at no charge.

We have no legal objections to the award, since regardless of the number of copies ordered by the Government, it appears that acceptance of Gross's bid will result in the lowest cost to the Government. However, we recommend that in the future, the National Mediation Board include estimates in its solicitation and evaluate prices for additional copies on the basis of these estimates.

Documents submitted to us by the National Mediation Board show that Gross was one of six firms responding to request for proposals No. 82/01. For each of three different delivery schedules (Items A, B, and C), bidders were required to furnish prices per page for original transcripts of hearings in Washington, D.C. (Sub-item 1) and elsewhere (Sub-item 2). They also were to submit prices per page for additional copies to be furnished to the Government and the public. The solicitation specifically stated that copies could not be sold to the public at a price higher than that of the copies sold to the Government, and the Government reserved the right to make copies available to the public at the actual cost of duplication. Bidders also were to submit prices per page for 50, 100, and more than 100 final copies of awards and reports (Item D).

According to the solicitation, award was to be based on a satisfactory statement of the bidder's experience and facilities and on the lowest cost to the Government, determined by evaluating bid prices for original transcripts according to the following percentages:

	(1) In D.C.	(2) Elsewhere
A. Immediate Delivery-- Two hours after the close of the day's hearing	10%	10%
B. Daily Copy--Delivery by 9 a.m. of the day following the hearing	10%	5%
C. Accelerated Copy-- Delivery within five working days	55%	5%

An additional 5 percent evaluation factor was to be applied to prices per page for final copies of awards and reports.

No evaluation factor was listed for additional copies, although the solicitation indicated that an Emergency Board would require four copies of each transcript, an Arbitration Board three copies, and the National Mediation Board one copy. Moreover, the solicitation did not include either an estimated number of hearings for any of these Boards or an estimated number of pages per transcript.

For original transcripts, as well as for final copies of awards and reports, Gross bid \$0 per page, regardless of time or place of delivery. Its price for additional copies was a uniform \$2 per page. The National Mediation Board states that since it will bear no cost for the original of any transcript, award to Gross would be in the best interest of the Government. The Board also notes that Gross's price for additional copies is equal to or lower than that of any other bidder except Alderson Reporting Company, Inc., which bid \$1.95 per page for additional copies on an accelerated basis. However, Alderson's price for original transcripts on that delivery schedule was \$.15 per page in Washington, D.C., and \$1.75 elsewhere.

The National Mediation Board therefore seeks a determination by our Office as to whether it properly may accept Gross's bid, citing two early Comptroller General decisions, 26 Comp. Gen. 881 (1947) and 18 Comp. Gen. 967 (1939), involving stenographic services in which the propriety of similar contracts was presumed.

Our Office specifically has recognized that bidders may elect not to charge the Government for certain work. See, for example, Alderson Reporting Company, Inc.; Ace-Federal Reporters, Inc., B-205552.2, February 12, 1982, 82-1 CPD 128, also involving stenographic reporting services. In such cases, we have required the bidder to take some affirmative step--such as inserting a zero, the words "no charge," or dashes--to indicate that it was aware of and willing to commit itself to furnish the goods or services covered by the item in question. When this is done, a bid is responsive and the bidder may be considered for award. See 48 Comp. Gen. 757 (1969); Aardvark/Keith Moving Company, B-200680, March 6, 1981, 81-1 CPD 180; National Office Moving Co., B-196282, March 10, 1980, 80-1 CPD 185.

We believe Gross has committed itself to furnish original transcripts of hearings and final copies of awards and reports to the Government at no charge; its bid therefore is responsive. In addition, Gross clearly has the lowest evaluated bid price, and for the number of additional copies indicated in the solicitation as required for the various boards, appears to be the low bidder.

We also believe, however, that the solicitation was seriously deficient for its failure to include estimates or a method of evaluating bid prices for additional copies. Given a slightly different pattern of bidding, it would have been impossible for the National Mediation Board to determine whether acceptance of Gross's apparent low bid actually would result in the lowest actual cost to the Government. In other words, the solicitation invited unbalanced bidding.

In requirements contracts, our Office has held that when exact quantities of items to be procured are not known, the solicitation must provide some basis for bidding, such as estimated quantities, and that when future needs cannot be estimated, past orders may be listed instead. Without estimates, bidders lack information that may be necessary for intelligent preparation of their bids, and they are not bidding on a common basis. See North American Reporting, Inc.; Ace-Federal Reporters, Inc., 60 Comp. Gen. 64 at 69, 70 (1980), 80-2 CPD 364.

Despite the deficiencies in the National Mediation Board's solicitation, in view of the policy against cancellation after bids have been opened and prices exposed, and since it appears that the Government's actual needs will be satisfied and other bidders--whose prices were higher regardless of the number of copies ordered--will not be prejudiced by acceptance of Gross's low bid, we do not recommend remedial action here. See generally Hampton Metropolitan Oil Co.; Utility Petroleum Inc., B-186030, B-186509, December 9, 1976, 76-2 CPD 471 and cases cited therein.

Therefore, if the National Mediation Board is satisfied as to Gross's experience and facilities, the bid may be accepted. In the future, however, the National Mediation Board should include estimates in its solicitations for reporting services, and when it is clear that additional copies will be required, it also should evaluate prices for them on the basis of those estimates.

F. H. Rowland, Jr.
Comptroller General
of the United States