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DECISION

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

FILE: B-207475.3 **DATE:** November 17, 1982

MATTER OF: Tektronix, Inc.

DIGEST:

> Failure to indicate amount of applicable duty included in low bid, evaluated on duty-included basis, does not require rejection of bid because omission did not affect bidder's legal obligation to perform, was not a condition inserted to protect bidder against future price changes, was irrelevant to evaluation, and did not prejudice other bidders.

Tektronix, Inc., protests the proposed award of a contract to Kikusui International Corporation (Kikusui) under invitation for bids (IFB) No. F41608-82-B-0257 issued by the Air Force. Tektronix first protested to the Air Force, which denied the protest. Tektronix contends that Kikusui's bid is nonresponsive and that the Air Force erred in denying the protest. We deny the protest.

The Air Force issued this IFB as the second step of a two-step, formally advertised procurement of oscilloscopes and related equipment. The IFB advised that, when applicable, the award would authorize duty-free entry, in which event the awarded unit price would omit the applicable amount of duty. Bids were to be based on a fixed price per unit for various order quantities. Amendment 3 to the IFB advised that bidders were required to include "the applicable amount of duty in conjunction with the percent of foreign content" in their unit prices and also identify the per unit amount of duty in a space provided in the amendment. This amendment also advised that the duty portion of all bids would be evaluated as prescribed by Defense Acquisition Regulation (DAR) § 6-600 (1976 ed.), except that bids for "Designated Country End Product" (DAR § 6-1600) would be evaluated with duty if the foreign content were 50 percent or more.

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Kikusui's bid identified its oscilloscope as a "Designated Country End Product" with approximately 65-percent foreign content. Kikusui specifically acknowledged receipt of amendment No. 3 and returned a copy with its bid, but left blank the line provided for entry of the unit amount of duty. Kikusui submitted the low evaluated bid.

Tektronix contends that Kikusui's failure to specify the amount of duty included in its bid rendered Kikusui's bid nonresponsive. In support of this contention, Tektronix argues that: (1) the Air Force could not rely on Kikusui's acknowledgement of amendment No. 3 to determine that Kikusui's bid included import duties, because Kikusui's failure to specify the amount of duty included cast doubt on Kikusui's compliance with this requirement; (2) Kikusui's omission of this information precludes award of the contract on the basis of Kikusui's bid since the IFB provides that the "awarded unit price will omit the applicable amount of duty"; (3) the apparent need for post-bid-opening negotiations between the Air Force and Kikusui to arrive at the contract price is antithetical to the advertised bidding procedures here; and (4) to the extent that Kikusui claims that it was trying to protect proprietary information by not disclosing the amount of included duty, Kikusui's bid falls within the ambit of our decisions requiring rejection of bids which do not make public the amount of the bid or other information required for bid evaluation.

In denying Tektronix's protest, the Air Force responded, in effect, that since Kikusui acknowledged amendment No. 3, Kikusui must conclusively be presumed to have included duty in its bid price and the amount of duty involved would not have affected the relative standing of the bidders. The Air Force therefore regarded Kikusui's failure to state the amount of duty included in its bid as a waivable minor informality. In the circumstances present here, we find the Air Force's position to be reasonable.

The question of responsiveness concerns whether a bidder has unequivocally offered to provide the requested items in conformance with the requirements of the solicitation. Northwest Ground Covers and Nursery, B-201609, February 9, 1981, 81-1 CPD 81. Kikusui's bid clearly obligated Kikusui to provide oscilloscopes in accordance with the solicitation requirements and identified Kikusui's oscilloscope as a "Designated Country End Product" with more than 50 percent foreign content. Kikusui's bid, therefore, would be evaluated with duty. In these circumstances, amendment No. 3 said to Kikusui, succinctly, that:

1. All bidders must include duty in their bids.

2. Your bid will be evaluated duty included; others will be evaluated duty-free.

3. State how much duty is included.

4. Award will be on a duty-free basis when applicable.

Kikusui took no express exception to any requirement of the solicitation and both affirmatively acknowledged receipt of and incorporated a copy of amendment No. 3 into its bid. The question here is whether Kikusui's omission of the amount of duty--information not needed for the evaluation of Kikusui's bid--was sufficient to render nonresponsive Kikusui's otherwise responsive bid. We conclude that it was not.

In reviewing cases of this nature, we have generally looked to the materiality of the omission as the dispositive factor in determining whether or not a bid should be rejected. In the present matter, we find it significant that this is not a situation where the omission creates an ambiguity concerning the extent of the bidder's legal obligation to provide the required items. See, e.g., Kings Point Mfg. Co., Inc., B-204981, March 4, 1982, 82-1 CPD 196; Air-A-Plane Corporation, B-200724, April 27, 1981, 81-1 CPD 324. Nor is this a situation where a bidder inserts a condition or an indefinite price in order to protect itself against some future price change, see, e.g., International Salt Company, B-200128, January 7, 1981, 81-1 CPD 142, or where the price cannot be ascertained for bid evaluation purposes. Computer Terminal Sales, B-200366, January 22, 1981, 81-1 CPD 37. We note also that no other bidder was prejudiced by the omission since even if the amount of duty were added to Kikusui's bid it would remain low. See Miller Disposal Services, Inc., B-205715, June 7, 1982, 82-1 CPD 543; cf. Bill Strong Enterprises, Inc., B-200546, March 5, 1981, 81-1 CPD 173. In sum, we find that Kikusui merely failed to provide information unnecessary to the evaluation of its bid which, in fact, was germane only if Kikusui were the successful bidder and even then was of value only in determining the ultimate cost to the Government of acquiring Kikusui's oscilloscopes--which remained low in any event. In these circumstances, the Air Force was not required to reject Kikusui's bid. See W.A. Apple Manufacturing, Inc., B-183791, September 23, 1975, 75-2 CPD 170, aff'd on reconsideration, B-183791, March 2, 1976, 76-1 CPD 143; 48 Comp. Gen. 357 (1968).

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States