

U/P/M/11
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DECISION



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

29969

FILE: B-215900

DATE: December 10, 1984

MATTER OF: Smith-Vos Construction Company

DIGEST:

Amendment to an IFB expressly deleted a provision in the Instructions and Notices to Bidders warning that bids exceeding the stated cost limitation would be rejected. However, because the amendment did not delete an identical provision in the Bidding Schedule or prominent references to the cost limitation in other sections of the IFB--the agency asserts that the single provision was deleted as redundant--the cost limitation still applies, so that a bid which exceeds the limitation is ineligible for award.

Smith-Vos Construction Company (Smith-Vos) protests the proposed rejection by the Air Force of its bid under invitation for bids (IFB) No. F04607-84-B-0032 for an air-conditioning installation project, line item No. 1, and an office repair project, line item No. 2.

We deny the protest.

The IFB advised that only one award would be made under the solicitation, to be based on the low aggregate bid (the total of both line items). Further, line item No. 1 was subject to a \$200,000 statutory cost limitation. The cost limitation was noted in block 17 on page 2 of the IFB, in line item No. 1 of the Bidding Schedule, in a Cost Limitation provision at the bottom of the Bidding Schedule, and in paragraph 16 of the Instructions and Notices to Bidders, which was identical to the provision at the bottom of the Bidding Schedule. The identical provisions also stated that bids which exceeded the cost limitation may be rejected unless the limitation was waived by the Under Secretary of Defense before award. Amendment No. 0002 to the IFB, however, deleted paragraph 16 of the Instructions and Notices to Bidders.

The Air Force received nine bids, five of which exceeded the \$200,000 statutory limitation for line item No. 1. All five, including the bid of the protester, were

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lower in the aggregate than the otherwise lowest responsive aggregate bid (\$633,289). The Air Force, however, believes the five bids--Smith-Vos' is the lowest one at \$577,590--to be nonresponsive to the cost limitation provision and, thus, ineligible for award.

Smith-Vos contends that since amendment No. 0002 deleted the cost limitation provision in the Instructions and Notices to Bidders, it was reasonable for the firm to assume that the Air Force intended to delete the cost limitation from consideration entirely. Smith-Vos argues that, therefore, its bid should not be rejected for exceeding the limitation. The Air Force responds that it deleted paragraph 16 of the Instructions and Notices to Bidders only because the paragraph duplicated the cost limitation provision on the Bidding Schedule. The agency argues that nothing in the amendment indicated that the deletion was meant to apply to other sections of the IFB and, therefore, that the cost limitation was left in effect in the IFB. The Air Force further notes that it has received bids in other procurements which exceeded statutory cost limitations even where there was no question as to applicability.

While the amendment would have been clearer had the reason for the deletion of paragraph 16 been included, we think the Air Force acted properly in rejecting the protester's bid. The amendment expressly provided only that the IFB was amended to delete item 16 of the Instructions and Notices to Bidders. There was no reference to the notation in block 17, to the notation in line item No. 1, or to the Cost Limitation provision at the bottom of the Bidding Schedule. Further, bidders were on notice that the cost limitation applied to line item No. 1 unless the limitation was waived by the Under Secretary of Defense, but there was no indication in the amendment that the statutory cost limitation had been waived. We therefore seriously question Smith-Vos' assumption, without inquiry before bid opening, that the Air Force erroneously neglected to delete these other prominent warnings about the limitation.

We further note that notwithstanding the protester's position, the statutory cost limitation in fact applied to the project, so that a contract could not be awarded to

Smith-Vos in any event--if the firm were to prevail in the protest the remedy would be a recompetition. Bids already have been exposed, however, with four of them being responsive to the cost limitation, and the Air Force has determined the lowest of the four to be reasonable in price. In these circumstances, we do not think that the amendment's lack of clarity with respect to the cost limitation's applicability warrants creating an auction atmosphere by canceling this invitation and soliciting new bids.

We thus find that Smith-Vos' bid and the others that exceeded the limitation properly have been found ineligible. The protest is denied.

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