

1001
PL I-
30669

DECISION



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

FILE: B-218231 **DATE:** March 12, 1985
MATTER OF: John C. Grimberg Company, Inc.

DIGEST:

1. Protest that procuring agency failed to furnish a sketch referenced in bid documents to protester is dismissed where the protester has not shown that competition and reasonable prices were not obtained and the failure to furnish the sketch was not shown to be the result of any deliberate or conscious effort to exclude the protester from competition.
2. Bid that is ambiguous as to whether it represents an unequivocal offer to meet a material requirement of solicitation is nonresponsive.

John C. Grimberg Company, Inc. (Grimberg), protests any contract award under solicitation No. N62477-81-B0482 issued by the Naval Facilities Engineering Command (Navy). Grimberg alleges that it was the second low bidder--in line for award because of the failure of the low bidder to comply with the small business set-aside requirements of the solicitation--but its bid was improperly rejected by the Navy as nonresponsive for taking exception to a requirement of the solicitation.

The protest is dismissed. We do so without obtaining a report from the contracting agency, since it is clear from material furnished on behalf of Grimberg that the protest is without legal merit. Bid Protest Regulations, § 21.3(f), 49 Fed. Reg. 49,417, 49,421 (1984) (to be codified at 4 C.F.R. § 21.3(f)); Jimmie Jones Co. of Oklahoma City, Inc., B-216134, Sept. 5, 1984, 84-2 C.P.D. ¶ 259.

Approximately 6 hours prior to the time established for the opening of bids on January 9, 1985, Grimberg discovered and advised the Navy by telegram that sketch No. TS02202-1, which was referenced in both paragraphs 3.3 (General Bidding) and 3.4 (General Backfilling) of section 02202 (Earth work for Utilities) of the solicitation, had not been included in the bid documents received by Grimberg. Section 02202 required that backfill for utilities be placed in

031453

accordance with the referenced sketch. Grimberg's telegram noted that due to the absence of the sketch, its bid did not include performance of the backfilling in accordance with the sketch. Still Grimberg contends it did not take exception to the requirement of the contract documents that utilities to be placed be backfilled in accordance with the specifications.

In general, the award of a contract is not improper solely because a bidder did not receive a copy of the entire solicitation, so long as there is adequate competition resulting in reasonable prices and there has been no deliberate or conscious intent on the part of the procuring agency to preclude a certain bidder from competing. See Coast Canvas Products II Co., Inc., B-214272, July 23, 1984, 84-2 C.P.D. ¶ 84. In the absence of substantive proof that an agency deliberately attempted to exclude a bidder, the bidder bears the risk of nonreceipt of a solicitation. See Capital Engineering & Mfg. Co., B-213924, Apr. 2, 1984, 84-1 C.P.D. ¶ 374. Thus, the propriety of a procurement does not depend upon whether a particular firm has been given the opportunity to bid, but upon whether the agency obtained adequate competition and reasonable prices. See Maintenance Pace Setters, Inc., B-212757, Jan. 23, 1984, 84-1 C.P.D. ¶ 98.

Grimberg does not allege that the Navy consciously attempted to exclude it from competing on this procurement, and on the record presented we are unable to conclude that competition for the procurement was inadequate or that the prices obtained were unreasonable. Even if Grimberg did not receive the referenced sketch as it claimed 6 hours before bid opening, the failure to include the sketch in the solicitation Grimberg received appears to have been inadvertent and not deliberate. See Coast Canvas Products II Co., Inc., B-214272, supra. Accordingly, there is no basis to determine that award of this contract was improper solely because a sketch related to placement of backfill was not included in the solicitation received by Grimberg.

A responsive bid is one that on its face is an offer to perform, without exception, the exact thing called for in the solicitation. See Giant Lift Equipment Manufacturing Co., Inc., B-213558, 63 Comp. Gen. 375 (1984), 84-1 C.P.D. ¶ 542. A bid which does not contain an unequivocal offer to provide the requested items or services in total conformance with the material terms of the solicitation is nonresponsive and must be rejected. See J.T. Systems, Inc., B-213308, Mar. 7, 1984, 84-1 C.P.D. ¶ 277. A material deviation is one that affects the price, quality, or quantity of goods or

services offered. Atco Surgical Supports Co., B-215076, Sept. 4, 1984, 84-2 C.P.D. ¶ 247. In our view, since the specification in section 02202 and the referenced sketch would affect the quality of and possibly the price for placement of backfill, the specification and sketch represent a material requirement.

It is Grimberg's position that its bid was responsive to the requirements of the specifications in that it does obligate Grimberg to perform all work actually indicated in the the contract documents, unless the referenced sketch requires the performance of such work in a manner materially different than that indicated by the specifications themselves. Since Grimberg's bid specifically states that if the referenced sketch requires performance in a manner "materially different" from other specifications set forth in the solicitation and there is no allegation or indication in the record that the sketch was not material and merely duplicated the other specifications, it is our view that Grimberg's bid is ambiguous with respect to whether it represents an unequivocal offer to comply with the material requirement in the referenced sketch. We have held that a bid that is ambiguous with respect to whether it represents an unequivocal offer to comply with a material requirement must be rejected as nonresponsive. Southwest Boat Corporation, B-216026, Sept. 10, 1984, 84-2 C.P.D. ¶ 276. Accordingly, Grimberg's bid was properly rejected as nonresponsive by the Navy.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel