



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tabco Products, Inc.

File: B-222632

Date: August 27, 1986

DIGEST

1. Under GAO's Bid Protest Regulations, a protest based upon improprieties in the terms of an invitation for bids apparent on the face of the invitation, must be filed prior to bid opening.
2. Bidder's notation on IFB Schedule that "Drum = 450 # Net" renders bid nonresponsive to solicitation for the supply of a chemical compound in 55-gallon drums of 500 pounds net weight, since for logistical reasons agency needs uniformity in the drums requisitioned from its inventory by using activities and offer of lesser quantity of chemical per drum provided protester with a competitive advantage over other bidders.
3. When a bidder does not bid on the precise quantity, measurement, or volume called for in the invitation for bids, the bid must be rejected as nonresponsive unless the intended price for the proper quantity, measurement, or volume can be determined from the face of the bid or the effect of the deficiency on the price of the bid is clearly de minimis and waiver would not be prejudicial to other bidders.
4. A nonresponsive bid may not be accepted, notwithstanding any savings it might represent to the government, since such acceptance would compromise the integrity of the competitive bidding system.
5. A nonresponsive bid may not be modified after bid opening in order to make it responsive.

DECISION

Tabco Products, Inc. (Tabco), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DLA-400-86-B-3879, issued by the Defense Logistics Agency, Defense General Supply Center (DLA), for an indefinite quantity of corrosion removing compound.

We deny the protest.

The IFB was issued on February 28, 1986, and solicited F.O.B. origin and destination bids for an indefinite quantity of corrosion removing compound in granular or flake form. Consistent with DLA's practice for a number of years, the IFB Schedule provided that the "unit" for pricing purposes was a steel drum ["DR"] each containing 500 pounds of the material. DLA states that the requirement for 500 pounds of material per drum was included in the IFB because it "provides for uniformity in both the evaluation of bids and the requisitioning of supplies by using activities" and is based on the amount of compound that will fill a 55 gallon drum.

None of the 12 firms who submitted bids, including Tabco, objected to the 500 pounds per drum requirement prior to bid opening. Tabco submitted the low bid on all line items. However, Tabco's bid took exception to the 500 pounds per drum packaging requirement because Tabco inserted next to its prices the statement "Drum = 450 # Net."

After being notified informally that its bid was going to be rejected, Tabco by letter dated April 25, 1986, offered to amend its bid (at an increased price per drum) to meet the 500 pounds net per drum packaging requirement. Tabco's letter indicated that it originally bid 450 pounds per drum net because Tabco found that it is sometimes difficult to fit 500 pounds of compound into a drum.

Following receipt of Tabco's letter, DLA randomly sampled the weight of the material delivered on recent corrosion removing compound contracts and found that in all cases the 500 pound net packaging requirement was met. By letter dated May 28, 1986, in which it cited Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-2 (1985), DLA rejected Tabco's bid because the statement "Drum = 450 # Net" took exception to an essential requirement of the solicitation, and to allow Tabco to impose such an exception would be prejudicial to other bidders.

Tabco first contends that the 500 pounds net per drum packaging requirement is unreasonable. Tabco has submitted evidence purporting to show that it is virtually impossible for it to provide 500 pounds of its compound in a 55 gallon drum. Tabco argues that the solicitation should not have requested a price per (500 pounds net) drum, but instead should have asked for bidders' prices per single pound of compound.

Although DLA has provided substantial evidence showing that the packaging requirement was, in fact reasonable, and notes that the other 11 bidders offered to comply with the requirement, we will not address this factual dispute. Tabco's contention that the IFB's packaging requirement is unreasonable constitutes an allegation of a solicitation impropriety apparent from the face of the IFB. Our Bid Protest Regulations require that a protest based upon an alleged impropriety in an IFB be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1986); The Homer D. Bronson Co., B-220162, Nov. 22, 1985, 85-2 C.P.D. ¶ 591. Because Tabco did not file

its protest until after bid opening, we will not consider the issue of whether the 500 pounds net per drum requirement was reasonable. The Homer D. Bronson Co., B-220162, supra.

Tabco next contends that either its bid should not have been rejected as nonresponsive, or that DLA should have accepted its post-bid opening subsequent offer to comply with the packaging requirements at an increased price per drum. We disagree.

Responsiveness is determined as of the time of bid opening and involves whether the bid as submitted represents an unequivocal offer to provide the products or services as specified, so that acceptance of it would bind the contractor to meet the government's needs in all significant respects. Johnson Moving & Storage Co., B-221826, Mar. 19, 1986, 86-1 C.P.D. ¶ 273. Any bid that is materially deficient must be rejected; a defect in a bid is material if it significantly affects price, quality, quantity, or delivery. Johnson Moving & Storage Co., B-221826, supra.

We find that Tabco's bid was properly rejected because the defect in its bid significantly affects delivery and price. First, the fact that Tabco took exception to a packaging (delivery) requirement constitutes a material exception requiring rejection. See The Homer D. Bronson Co., B-220162, supra. Here, the drums of compound, which are identified by National Stock Number, are for delivery to depots across the country. DLA points out that when these supplies are requisitioned by using activities, it is on the understanding that each unit of issue—i.e., each drum—contains a minimum of 500 pounds of compound. This uniformity would not exist, and logistics would be complicated, if the protester's 450-pound drums were put in inventory along with other suppliers' 500-pound drums.

Second, by offering to comply with the 500 pounds net per drum requirement with a price increase, Tabco admits that the exception that it took affects its price.

Tabco contends that the exception which it took, i.e., bidding 450 pounds net per drum versus 500 pounds net per drum, is insignificant when compared to the cost savings to the government by accepting Tabco's bid. We disagree.

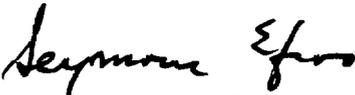
When a bidder does not bid on the precise quantity, measurement, or volume called for in the IFB, the bid must be rejected as nonresponsive unless the intended price for the proper quantity, measurement, or volume can be determined from the face of the bid, Artisan Builders, B-220804, Jan. 24, 1986, 65 Comp. Gen. _____, 86-1 C.P.D. ¶ 85, or the effect of the deficiency on the price of the bid is clearly de minimis, and waiver would not be prejudicial to other bidders. See, e.g., Leslie & Elliott Co., 64 Comp. Gen. 279 (1985), 85-1 C.P.D. ¶ 212.

Neither exception applies here. Tabco bid on drums containing 450 pounds of compound, and although after bid opening, Tabco offered an increased price on the required weight per drum after bid opening, it is not possible to determine from the face of Tabco's bid what the price would have been if Tabco would have bid on 500 pounds of compound per drum. See Turbine Engine Services—Request for Reconsideration, 64 Comp. Gen. 639 (1985), 85-1 C.P.D. ¶ 721. Tabco itself has indicated that, because of variations in density in its raw material, "it becomes difficult to fit 500 pounds in a 55-gallon drum." This suggests that the effort required to fill the drum becomes greater as the drum's capacity is approached. Therefore, had Tabco observed the 500-pound requirement, we cannot say with certainty how much its bid would have been increased. In view of the uncertainty of Tabco's price for a 500-pound drum, we also cannot say that the effect of Tabco's bid deficiency is clearly de minimis and not prejudicial to other bidders.

Tabco argues that the government could save money by accepting its bid. Although rejection of Tabco's bid may result in additional cost to the government on this procurement, we have consistently held that a nonresponsive bid may not be accepted, even though it would result in savings to the government, since such acceptance would compromise the integrity of the competitive bidding system. Industrial Structures, Inc., 64 Comp. Gen. 768 (1985), 85-2 C.P.D. ¶ 165; 17 Comp. Gen. 554 (1938).

Finally, we cannot agree with Tabco's contention that DLA should have accepted its post-bid opening offer to comply with the 500 pounds net packaging requirement at an increased bid price. In order to maintain the integrity of the competitive bidding system, modifications of bids after bid opening may not be made in order to make a nonresponsive bid responsive. Lioncrest Ltd., Inc., B-221026, Feb. 6, 1986, 86-1 C.P.D. ¶ 139.

The protest is denied.


for Harry R. Van Cleve
General Counsel