



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pluribus Products, Inc.

File: B-224435

Date: November 7, 1986

DIGEST

1. Agency's failure to discover "all or none" bid qualification at bid opening but before award does not affect responsiveness of bid or consideration of qualification in evaluation of bids, where invitation for bids permitted bidding on an "all or none" basis and the qualification was typed on the bid at the end of the pricing schedule.
2. In the absence of evidence affirmatively establishing that "all or none" qualification was added to a bid after opening, the General Accounting Office will not question consideration of the bid as qualified, even though an appearance of impropriety was created when the agency failed to discover the qualification until 2 months after bid opening.

DECISION

Pluribus Products, Inc. protests the award of a contract for field desks to Texas Trunk Co. under invitation for bids (IFB) No. DLA400-86-B-3469, issued by the Defense Logistics Agency (DLA). The protester contends that because of the concealed nature of the "all or none" qualification of Texas Trunk's bid, the bid should be rejected as nonresponsive or, in the alternative, the qualification should not be considered. We deny the protest.

The solicitation, issued March 13, 1986, requested prices for desks delivered FOB destination and/or FOB origin to five different locations. Bidders were requested to submit prices for four alternate quantities for each location. The solicitation advised that the quantity awarded for each location would depend on the requirements at the time of award, price differentials, and the availability of funds. The solicitation provided that "the government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations."

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At bid opening on April 15, an original and a revised bid were received from Texas Trunk. The agency determined that Texas Trunk was apparently low for line items 1, 2, and 5 and Pluribus was apparently low for line items 3 and 4. Preaward surveys were performed for both bidders. In a preaward review of Texas Trunk's bid on June 24, the agency first noticed that on the pricing schedule, following the last line item, in a space between the preprinted portions of the bidding form, Texas Trunk had restricted its bid to "all or none of items procured." The agency then corrected the bid abstract to reflect this restriction, and determined that Texas Trunk's "all or none" bid represented the lowest cost to the government. Following an award to Texas Trunk for all of the line items, Pluribus protested to this Office on July 18.

Pluribus argues that Texas Trunk's bid should have been rejected or the bid qualification ignored due to the alleged inconspicuous placement of the "all or none" restriction in the bid. The protester maintains that the placement of the typed words of the qualification in a small blank space between preprinted portions of the solicitation form, so that the left-hand margins coincide (pricing was to be inserted on the right side of the bid page) makes the qualification almost impossible to detect. The protester argues that by the alleged inconspicuous placement, the awardee attempted to retain the option to point out the bid restriction or to remain silent.

Pluribus believes that an investigation as to whether the qualification was actually on the bid at the time of opening is warranted. Pluribus points out that Texas Trunk did not notify the agency of the presence of the "all or none" restriction at bid opening or during the preaward survey, and that affidavits submitted by Texas Trunk regarding how it prepares its bids are inconsistent with the notations on the bids submitted in this case. The protester also complains that the original pages of Texas Trunk's revised bid are missing from agency files, so that they cannot be examined to determine whether the restriction was typed on a Texas Trunk typewriter.

In response to the protest, Texas Trunk contends it had no notice that it was being considered for award of less than all the line items, either at bid opening or during the preaward survey, and therefore had no reason to inform the agency of its "all or none" bid qualification. The firm also has submitted two reports of a forensic document examiner who examined xerox copies of the revised bid pages and the

original pages of the initially submitted bid. The examiner concluded that the "all or none" restriction on both of the documents is typed in "the same proportional spacing type-style" which is found on the IBM Executive Typewriter, Serial No. 2143623, which is owned by Texas Trunk, Inc. She found, however, that the typewriter used by Texas Trunk is in relatively good repair and produces insufficient typing defects or unusual characteristics necessary to definitely conclude that the bids were produced on the typewriter. As discussed above, DLA is unable to locate the original pages of the revised bid. However, we have received from the agency the original of the cover letter submitted to the agency with Texas Trunk's revised bid and the original pages of the initially submitted bid. Texas Trunk further states that it has a long-established policy of "all or none" bidding, and submitted copies of excerpts from past "all or none" bids.

In our view, DLA acted properly when it discovered the restriction in Texas Trunk's bid. In the absence of a provision in the solicitation to the contrary, an "all or none" bid is responsive and must be accepted if it offers the lowest aggregate price. Walsky Construction Co., B-216737, Jan. 29, 1985, 85-1 CPD ¶ 117; Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-5 (1985). Since the IFB contained no prohibition against bidding on an "all or none" basis, bidders were permitted to qualify their bids on that basis without rendering them nonresponsive. Moreover, where a bid is submitted on an "all or none" basis, the bidder does not have the option to decide after bid opening whether it will accept an award on less than the total number of items bid. Canova Moving & Storage Co., B-207168, Jan. 18, 1983, 83-1 CPD ¶ 59. The agency's failure to discover the qualification until after bid opening did not affect the legal rights of the parties and did not render the aggregate award to Texas Trunk improper. See Paragon Van Lines, Inc., B-222018.2, June 25, 1986, 86-1 CPD ¶ 591.

The protester cites Central Mechanical Construction, Inc., B-220594, Dec. 31, 1985, 85-2 CPD ¶ 730, as a situation similar to this case. In Central Mechanical we held that a modification increasing a bid price, written on the envelope that contained the bid, should not be considered. The contracting officer did not see the writing until the bidder's agent drew his attention to it after the bid was opened and read aloud. We stated that the modification was so inconspicuous in size and location on the envelope corner that it afforded the bidder an option it could exercise depending on

its relative standing among other bidders. In this case, however, while the qualification could reasonably have been overlooked at bid opening because of its location between preprinted portions of the bid form, the language was on the bid document itself and in a logical location at the end of the pricing schedule. Under these circumstances, we do not believe that the placement of the modification provided Texas Trunk with a possible advantage over other bidders.

Regarding the protester's request for an investigation, we generally do not conduct investigations pursuant to our bid protest authority to establish the validity of a protester's suspicions. Fugro Inter, Inc.--Reconsideration, B-219393.2, Dec. 13, 1985, 85-2 CPD ¶ 654. In this connection, the protester cites George C. Martin, Inc., 55 Comp. Gen. 100 (1975), 75-2 CPD ¶ 175, a case concerning a similar allegation of bid tampering, in which we investigated whether an "all or none" qualification was on the bid at opening. In Martin, there was a serious question of whether a distinctive handprinted "all or none" notation could have been reasonably overlooked by the contracting officials. Because of the serious question raised about the integrity of the procurement process in the circumstances of that case, we had the bid documents and handwriting specimens inspected.

Here, we believe that the restriction could have been overlooked at bid opening. The "all or none" qualification was typed in a small space between preprinted portions of the solicitation form and was aligned with the left margin of the form. On the original of the initially submitted bid, the qualification is typed in light blue ink, but is not distinctive or immediately noticeable when reading the bid amounts. While agency personnel did not initially notice the qualification, the record contains no affirmative evidence that it was not on the bid as submitted. Moreover, as discussed above, a forensic document examiner has already reviewed available material and concluded that Texas Trunk's typewriter has insufficient individual characteristics to definitely identify any typing as being from the typewriter. She found nothing, however, to indicate that the "all or none" qualification was not produced on Texas Trunk's typewriter. Consequently, we do not believe that additional investigation would be warranted in this case.

The FAR, 48 C.F.R. § 14.402-1, requires that bids should be read aloud to all persons present when practical, and 48 C.F.R. § 14.403, requires that the agency certify that the abstract of bids is accurate. To the extent the procuring agency failed to read aloud and properly record Texas Trunk's bid qualification, its error did not affect the validity of the bid. In the absence of affirmative evidence indicating

that the qualification of Texas Trunk's bid was affixed after bid opening, we conclude that the firm's bid was properly qualified and as such the lowest responsive total bid available to the government.

We deny the protest.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel