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Carter



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Inter-Continental Equipment, Inc.
File: B-225689
Date: May 14, 1987

DIGEST

Where invitation required new shipping containers, bid to furnish containers transported from overseas manufacturer filled with cargo properly was rejected, since such equipment is "used," not "new," as those terms are commonly understood. Invitation for bids required notice of intent to furnish used equipment and opportunity for government approval or rejection; by failing to provide notice of intent or seeking clarification of requirements, bidder assumed risk that bid might be rejected.

DECISION

Inter-Continental Equipment, Inc. (ICE), protests the Department of the Navy's rejection of ICE's bid under invitation for bids (IFB) No. N62578-86-B-6306. We deny the protest.

The Navy issued this IFB to acquire refrigerated shipping containers to be used in transporting perishable items. The containers are essentially 20 by 20 by 8 foot metal boxes, to which refrigeration equipment and insulation are added. The IFB incorporated the Federal Acquisition Regulation clauses found at 48 C.F.R. §§ 52.210-5, 52.210-7 (1985). The first clause states that the contractor represents that all supplies or components delivered under the contract are new. The clause further provides that if the contractor believes furnishing used or reconditioned materials will be in the government's interest, he must so notify the contracting officer in writing, including his reasons therefor and the proposed consideration (benefit) to the government in the event the contracting officer authorizes the use of used or reconditioned materials. The second clause prohibits the use of used or reconditioned materials in the performance of the contract unless they were identified in the attachment to the offer or bid and approved by the contracting officer.

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ICE's bid was low. The Navy, however, learned that ICE intended to install new refrigeration equipment in new containers that would be shipped from the overseas manufacturer by giving them to a shipping company to use for commercial cargo in exchange for free transit. The Navy considered that this rendered the containers "used," contrary to the new material clauses in the IFB, and concluded that ICE had misinterpreted the IFB. The Navy rejected ICE's bid because it had not been prepared on the basis of the essential requirements of the IFB.

ICE contends that bartered transportation arrangements of the type ICE contemplated are normal in the industry for the delivery of new containers and does not render the containers "used." ICE also asserts that it has used this method of initial delivery on other contracts, including Navy contracts, and argues that it reasonably relied on this precedent.

We think the Navy acted reasonably in rejecting ICE's bid. In our view, the shipment of containers filled with cargo constitutes "use" of the containers, with the end result that the containers are "used" when they arrive, not "new," as those terms are commonly understood. The fact that it may have been acceptable in other procurements to obtain -- free transportation in exchange for "first use" of the containers is not relevant, since each procurement is a separate transaction and must stand alone. Shannon Resources, Inc., B-220367.4, Apr. 28, 1986, 86-1 C.P.D. ¶ 411.

Moreover, the clauses incorporated in the IFB required, at a minimum, that there be notice to the government of proposed used or reconditioned materials and an opportunity for government approval or rejection. We note, for instance, that in each of the prior acquisitions ICE cites in support of its claim of precedent, ICE was specifically advised prior to submission of bids or best and final offers that "first use" of the containers in exchange for transportation was permissible. The current procurement, however, provides no evidence of any such advice. In view of this obvious omission, we think ICE was unreasonable in concluding, without prior approval, that the Navy would permit "first use" of the containers in this procurement; by failing to provide notice of its intentions or seeking clarification of the IFB, ICE assumed the risk that its bid might be rejected.

In sum, since ICE submitted a bid that was not based on the IFB'S essential requirements, the Navy's rejection of the bid was proper. See Donald Owen & Associates, Inc., 63 Comp. Gen. 371 (1984), 84-1 C.P.D. ¶ 525.

The protest is denied.

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General Counsel