The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Barnes Drill Co.

File: B-226591

Date: May 26, 1987

DIGEST

Bid which fails to acknowledge material amendment concerning equipment specifications, and which imposes protester's standard terms and conditions which take exception to numerous invitation for bids requirements--including delivery terms and bidder's obligtion to pay applicable taxes--is properly rejected as nonresponsive.

DECISION

Barnes Drill Co. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAA08-86-B-0196 issued by the Army for honing machines.

We deny the protest.

The Army rejected Barnes' low bid because Barnes included its standard terms and conditions. These provide that prices quoted are f.o.b. origin, while the IFB required delivery on an f.o.b. destination basis, and that all applicable taxes must be paid by the purchaser, the Army, rather than being included in the bid price as required by the IFB. The terms and conditions contained a number of other provisions that would also render Barnes' bid nonresponsive; however, we need not consider these other terms since Barnes' bid was clearly nonresponsive based upon these two exceptions.

Barnes contends that since the terms and conditions were part of its descriptive literature, which was not solicited by the IFB, these terms should have been disregarded, or Barnes should have been permitted to correct the inadvertent inclusion of its standard commercial terms and conditions as a minor mistake in its bid.

We have held that where a solicitation requires that bids be submitted on an f.o.b. destination basis, a bid which specifies that delivery will be f.o.b. origin is nonresponsive because this change shifts the risk of loss or damage from

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the contractor to the government. Barber-Colman Co., B-203132, Aug. 11, 1981, 81-2 C.P.D. ¶ 122; Avantek, Inc., B-219622, Aug. 8, 1985, 85-2 C.P.D. ¶ 150. We have also held that where, as here, a bidder provides that it is not responsible for the payment of taxes, without elsewhere specifying the class and amount of applicable taxes, when the IFB requires inclusion of applicable taxes in the bid price, the bid is nonresponsive. Cornelius Architectural Products, B-224140, Oct. 29, 1986, 86-2 C.P.D. ¶ 492.

Barnes contends that since the literature was not required it should have been disregarded pursuant to the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.202-4(g) (1986). This section provides that unsolicited descriptive literature generally may be disregarded unless it is clear from the bid or accompanying papers that the bidder's intention was to qualify the bid. However, where, as here, the unsolicited literature clearly relates to the equipment described in the bid, we have found a sufficient relationship between the bid and the literature such that the literature may not be disregarded. Caprock Vermeer Equipment, Inc., B-217088, Sept. 3, 1985, 85-2 C.P.D. ¶ 259.

Barnes also alleges that since the terms and conditions were inadvertently included as part of the descriptive literature submitted with its bid, the Army should have considered Barnes' previous bidding history under which Barnes has always adhered to required procedures and has never taken exception to solicitation requirements. However, the record shows that Barnes' terms and conditions were not merely inadvertently included with its bid; each page of Barnes' bid contains the heading: "The following subject to terms and conditions attached." In addition, the signature page of Barnes' bid ends with the statement that: "This quotation is subject to Barnes' standard terms and conditions dated February 8, 1984, as enclosed, including warranty, disclaimer, and limitation of remedies."

In any event, a firm's intention as to the basis for its bid must be determined solely from the bidding documents. Even assuming that post-bid opening events or explanations may show that a firm actually may have intended something other than that reflected in the bid, this is irrelevant to whether the bid is responsive. Toolmate, Inc., B-224804.2, Feb. 4, 1987, 87-1 C.P.D. ¶ 113.

We also note that Barnes' bid failed to acknowledge a material amendment which clarified and revised the specifications for the honing machines. This is itself a sufficient basis to reject a bid as nonresponsive. Project Engineering, Inc., B-222005, Feb. 25, 1986, 86-1 C.P.D. ¶ 196.

Barnes also asserts, on information and belief, that the next low bidder, Viereck Co., to whom award has been made, is not a responsible, responsive bidder, because it is not a manufacturer of the equipment called for in the solicitation. As the Army points out, the IFB did not require that the bidder be a manufacturer, and Viereck Co. is a regular dealer which was determined to be responsible and responsive.

The protest is denied.

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for Harry R. Van Cleve
General Counsel