



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Electrographic Corporation--Request for
Reconsideration
File: B-225517.2
Date: June 8, 1987

DIGEST

1. General Accounting Office (GAO) affirms its prior decision sustaining protest that awardee's bid was nonresponsive since section of solicitation schedule which awardee had deleted in its bid by drawing a series of diagonal lines across it contained a material requirement and the deletion of that requirement indicated the bidder was not bound to perform work.
2. Even though GAO recommends that award be made to the protester for the remaining period of the contract term, the protester's cost of filing and pursuing its protest may be allowed since the protester has lost the opportunity to perform more than 6 months of the contract period.

DECISION

Electrographic Corporation requests that we reconsider our decision in Record Press, Inc., B-225517, Mar. 20, 1987, 87-1 C.P.D. ¶ 321. In that decision, we sustained a protest filed by Record Press, Inc., concerning a contract awarded to Electrographic by the Administrative Office of the United States Courts under invitation for bids (IFB) No. NYSAC-87-01. In our prior decision, we concluded that Electrographic's bid should have been rejected as nonresponsive, and we recommended that the contract be terminated and reawarded to Record Press.

We affirm our prior decision and, in addition, we find the protester entitled to the costs of filing and pursuing its protest, including reasonable attorney's fees.

Preliminarily, we note that Electrographic did not participate in the prior bid protest in any way. Ordinarily, under § 21.12(a) of our Bid Protest Regulations, an interested party who was aware of a protest, but chose not to participate in it, is not entitled to request reconsideration. However, in its request for reconsideration, Electrographic

states that the Administrative Office of the United States Courts failed to notify Electrographic of the protest and did not furnish it copies of the protest submissions as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(a) (1986). The agency has advised us that it did, in fact, fail to advise Electrographic of Record Press' protest. Since this is Electrographic's initial opportunity to participate, we will consider the substance of its arguments. See, e.g., Meridian House International--Request for Reconsideration, 64 Comp. Gen. 704 (1985), 85-2 C.P.D. ¶ 93.

The solicitation under which the contract was awarded called for bids to print slip opinions for the United States Court of Appeals for the Second Circuit. The initial contract period was for 1 year with two 1-year options to renew.

Section B-9 of the IFB requested bids for work which would be required on a "rush" basis. Subsections B.9.1 through B.9.4 requested bids for specified "rush" situations, varying as to when the copy would be received and when the slip opinions must be delivered. In each of the different situations, the subsections contained language permitting bidders to bid on either a per page basis or, alternatively, as a percentage of their regular rate. A notation at the bottom of section B.9 stated, "FOR ITEMS B.9.1 To B.9.4, STRIKE OUT ALTERNATIVE NOT ACCEPTED." This notation clearly instructed each bidder to either strike out the language concerning submission of a bid on a per page basis, or, alternatively, to strike out the language concerning submission of its bid as a percentage of its basic rate--depending on how each bidder chose to submit its bid.

In its response to the solicitation, Electrographic drew a series of diagonal lines through section B.9 in its entirety. No other entry for this section was made.

In our prior decision we concluded that, in lining out section B.9, Electrographic effectively declined to bid on this section and thus did not bind itself to perform any "rush work" under the contract. We applied the well-settled rule that a bid is nonresponsive if it does not offer to perform all of a solicitation's requirements--unless a notation is made which clearly indicates the bidder's intent to provide the requirement at no additional charge. See Syracuse Safety-Lites, Inc., B-222640, July 1, 1986, 86-2 C.P.D. ¶ 3.

Since Electrographic did not submit a price for performing the "rush work" requirements and also did not make any other notation indicating its intent to perform that work at no

additional charge, we concluded that the agency should have rejected Electrographic's bid as nonresponsive.

In its request for reconsideration, Electrographic does not dispute our conclusion that its offer did not bind it to perform "rush work" under the contract. Rather, it argues that the express terms of the IFB permitted it to submit a "no bid" on the "rush work" requirements; alternatively, it maintains that the solicitation was ambiguous and therefore, resolicitation is appropriate. We do not find either argument persuasive.

Initially, Electrographic argues that, in lining out section B.9, it was merely complying with the notation at the bottom of section B.9 which instructed bidders to ". . . STRIKE OUT ALTERNATIVE NOT ACCEPTED." As discussed above, that notation directed the bidder to strike out the method of submitting its bid which it chose not to use--not to eliminate selected portions of the IFB's requirements. We find no basis for Electrographic's argument that the notation permitted it to line out the entire section.

Electrographic also argues that a provision of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-10 (1985), which was incorporated into the solicitation, permitted Electrographic to submit a "no bid" on section B.9. This provision states in pertinent part:

". . . Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid." 48 C.F.R. § 52.214-10(c). (Underlining in original.)

In essence, Electrographic argues that, under this provision it was permitted to bid on less than all of the line items, and thus, its offer was responsive despite its failure to bid on "rush work."

The agency, however, states that multiple awards were not contemplated under this IFB. Our following review of the specific tasks called for, along with our analysis of the IFB as a whole, supports the agency's position. The tasks involved here are so interrelated and cumulative in nature as to preclude severing the "rush work" requirements from the rest of the contract. Accordingly, we again conclude that

the "rush work" provisions were material to the contract and Electrographic's "no bid" on those requirements rendered its bid nonresponsive.

Section F.4 of the IFB states that the contractor is required to print each opinion as a separate booklet, with pages for the entire court term numbered consecutively. This section also provides that if a preceding opinion ends with an odd-numbered page, the intervening even page will be omitted and the succeeding opinion will begin with an odd-numbered page. Clearly, the tasks called for in this section require the contractor to know the last page number used in the preceding opinion--information which would not be immediately accessible with more than one contractor performing the printing work. IFB sections B.5 and B.6 require the contractor to accumulate errata corrections, arranged in page number sequence, corresponding to the opinion page numbers against which corrections were made, until a complete opinion-sized page can be composed and printed. Again, having more than one contractor performing the printing renders the accumulation requirements difficult to perform. Finally IFB sections B.16 and B.17 require the contractor to arrange the opinions into "daily" and "weekly" sets and mail the sets to designated recipients. Here again, the nature of the function performed requires that a single contractor do the work.

We conclude that the cumulative nature of the required tasks, along with their interdependency, precludes awarding normal printing work to one contractor and "rush work" to another. Such an arrangement would be extremely impractical as well as uneconomical. Accordingly, based on the specific work required by this IFB, we conclude that multiple awards under this contract were neither contemplated nor permissible. We believe the unique, inseverable nature of the tasks involved distinguish this case from those where we have held that the incorporation of FAR, 48 C.F.R. § 52.214-10, indicates that multiple awards are permissible. See, e.g., Goodman Bail, Inc., B-217318, Mar. 25, 1985, 85-1 C.P.D. ¶ 348.

Finally, Electrographic argues that the notation at the bottom of B.9 together with the incorporated FAR provision discussed above, created an ambiguity in the IFB which was not apparent to Electrographic until after it learned of our decision. Electrographic argues that under its interpretation of the IFB, the IFB provisions permitting the striking out of alternatives and permitting bidders to bid quantities less than those specified reasonably allowed Electrographics to submit a "no bid" on the rush work requirement. Electrographic maintains that its interpretation of the IFB was

reasonable and, therefore, if our contrary interpretation is also reasonable, the IFB is, at best, ambiguous. Electrographic argues that, based on this ambiguity, the requirement should be resolicited rather than awarded to Record Press.

It is well-settled that an ambiguity exists only where two or more reasonable interpretations of a solicitation are possible. See Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 C.P.D. ¶ 234; EMS Development Corp., B-207786, June 28, 1982, 82-1 C.P.D. ¶ 631. The protester is required to show that its interpretation of the language in issue is reasonable and susceptible to the understanding it reached. Wheeler Bros., Inc. et al.--Request for Reconsideration, B-214081.3, Apr. 4, 1985, 85-1 C.P.D. ¶ 388. When a dispute exists as to the actual meaning of a solicitation requirement, this Office will resolve the matter by reading the solicitation as a whole. System Development Corp., B-219400, Sept. 30, 1985, 85-2 C.P.D. ¶ 356.

As discussed above, upon our review of the IFB as a whole, we conclude that the unique task requirements in this IFB render Electrographic's interpretation of the IFB unreasonable. Under Electrographic's interpretation, we would be forced to conclude that the agency contemplated the award of normal printing work to one contractor and the award of "rush work" to another. As stated above, such a conclusion is unwarranted. Accordingly, under these circumstances, we find no ambiguity to exist.

We have been informally advised by the agency that it has withheld action concerning our prior recommendation pending our determination on Electrographic's request for reconsideration. Following the agency's decision to suspend implementation of our recommendation, Record Press wrote to our Office noting, among other things, that both the time necessary to resolve the initial protest and now the time taken to respond to the request for reconsideration have substantially cut into the 1-year contract which was initially awarded on November 12, 1986. Accordingly, it asks that:

- (1) The remainder of the contract which we recommend be awarded to Record Press be renewed for all permissible option periods; and
- (2) our Office grant Record Press the reasonable attorneys' fees it has incurred in connection with this bid protest.

Concerning Record Press' request that the options to renew the contract be exercised, we must respond that such a decision is a matter of contract administration which is not for our review under our bid protest function. Excel Services, Inc., B-217184, May 8, 1985, 85-1 C.P.D. ¶514; Tri-State Service Co., B-208567, Jan. 17, 1983, 83-1 C.P.D. ¶ 44. We thus have no authority to order the agency to exercise the options under this contract.

Concerning Record Press' request for attorney's fees, the Competition in Contracting Act of 1984, 31 U.S.C. § 3554 (Supp. III 1985), and our Bid Protest Regulations, 4 C.F.R. § 21.6 (1986), provide authority for our Office to grant the costs of pursuing a protest, including reasonable attorney's fees, where appropriate. Since Record Press has lost the opportunity to perform more than 6 months of the services originally procured, we find that it is entitled to reasonable costs of filing and pursuing its protest, including attorney's fees. 4 C.F.R. §§ 21.6(d) and (e) (1986); Pacific Sky Supply, Inc., B-225513, Mar. 30, 1987, 87-1 C.P.D. ¶ 358. Record Press should submit its claim for such costs directly to the agency. 4 C.F.R. § 21.6(f).

For the reasons discussed above, we affirm our prior decision and recommend that the contract with Electrographic be terminated for convenience and award made to Record Press.



Acting Comptroller General
of the United States