



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ansonia Copper & Brass, Inc.

File: B-227002

Date: July 23, 1987

DIGEST

1. A letter bid that includes preprinted terms and conditions that vary from the terms and conditions in the solicitation is nonresponsive.
2. Agency's possible failure to solicit potential bidder is not a basis for sustaining protest where there is no evidence agency deliberately sought to exclude bidder from competition and prices received are considered reasonable.

DECISION

Ansonia Copper & Brass, Inc., protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. DLA700-87-B-0494, issued by the Defense Construction Supply Center, Defense Logistics Agency (DLA), for copper tubing, pursuant to military specification MIL-T-16420K. DLA rejected Ansonia's letter bid as nonresponsive because it included numerous preprinted terms and conditions that the contracting officer found were inconsistent with the IFB requirements. Ansonia contends that it should receive the award because it submitted the low bid and sufficiently indicated its agreement to the IFB requirements.

We deny the protest.

Ansonia's bid, one of five received, was in the form of a letter bid, necessitated by Ansonia's nonreceipt of an IFB package. This letter bid, attached to and returned with amendment 0001 (the only part of the IFB Ansonia received), was prepared on stationery that included the following preprinted statement at the top of the page: "The quotation is subject to price, terms and conditions on the face and on the reverse side of this sheet." On the bottom of the page is preprinted:

"Prices and deliveries named in this quotation are those currently in effect. In the event of an order, the prices at which the material will be

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billed will be those in effect on the date of shipment unless otherwise negotiated. The delivery promise will be in accordance with our schedules on date the order is accepted."

On the reverse side of the letter bid were 11 more "terms and conditions purporting to govern transportation and other terms of sale."

At the bottom of amendment 0001, as attached to the letter bid, appeared the following preprinted government language:

"Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as theretofore changed, remain unchanged and in full force and effect."

Below this language, Ansonia's product manager typed and signed his name.

DLA rejected the bid based on the preprinted terms, which conflicted with specific IFB terms, including the requirement for a firm, fixed price. Ansonia maintains that its signature accepting the terms preprinted on amendment 0001 overrode the terms of its letter bid and constituted an agreement to perform as required by the IFB. DLA responds that this signature, at best, rendered the bid ambiguous. We agree with DLA.

Under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-2(a) (1986), any bid that fails to conform to the essential requirements of the invitation for bids must be rejected. A bid that, if accepted by the government as submitted, would not obligate the contractor to perform the contract in exact conformance with all material provisions of the solicitation is nonresponsive and must be rejected. See Buckeye Pacific Corp., B-212183, Aug. 30, 1983, 83-2 CPD ¶ 282. We have specifically held that a bid that includes preprinted terms and conditions that vary from the IFB requirements is nonresponsive. The Homer D. Bronson Co., B-220162, Nov. 22, 1985, 85-2 CPD ¶ 591.

Here, Ansonia does not dispute that the terms preprinted on its letter bid conflicted with the IFB but, rather, only argues that its signing of the amendment negated those terms. While we would agree that Ansonia's signature on the amendment ordinarily would be enough to evidence an intent to comply with the IFB terms and conditions, here, this is only one of two valid interpretations, the other being that the preprinted terms controlled.

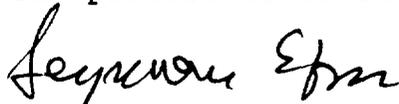
This is a classic instance of an ambiguous bid, that is, a bid subject to two reasonable interpretations, under one of which (Ansonia's) the bid is responsive and under the other (DLA's), the bid is nonresponsive. In these circumstances, since it cannot be said that the bid unequivocally offers performance in accordance with all IFB requirements, the bid was properly rejected as nonresponsive. See generally Precise Metal Parts Co., B-224788, Jan. 5, 1987, 87-1 CPD ¶ 8. Our conclusion is not changed by the fact that Ansonia may not have intended to modify the IFB terms and conditions. The Homer D. Bronson Co., B-220162, supra.

We further point out that a bid that is nonresponsive may not be corrected after bid opening to be made responsive, since the bidder would have the competitive advantage of choosing to accept or reject the contract after bids are exposed. Avantek, Inc., B-219622, Aug. 8, 1985, 85-2 CPD ¶ 150.

Ansonia suggests that the problems with its letter bid were due to the Army's failure to send it a bid package in the first place, necessitating submission of the bid on its own preprinted stationery.

Ansonia's nonreceipt of the IFB is not a basis for sustaining the protest. A procuring agency's failure to solicit a potential bidder does not provide a compelling reason for resolicitation absent a showing that the agency made a deliberate attempt to preclude the bidder from competing, did not make a significant effort to obtain adequate competition, or failed to obtain reasonable prices. G&L Oxygen and Medical Supply Services, B-220368, Jan. 23, 1986, 86-1 CPD ¶ 78. Although it is unclear why Ansonia did not receive a copy of the IFB--Ansonia was on the bidders list and was sent and received amendment 0001--there is no evidence that DLA deliberately sought to exclude Ansonia from the competition. Indeed, DLA considered Ansonia's timely letter bid an entirely acceptable form of bidding, but for the matter of the conflicting terms. Since DLA considers the competition and prices received reasonable, and Ansonia does not allege otherwise, this protest basis is without merit.

The protest is denied.

for

Harry R. Van Cleve
General Counsel