



The Comptroller General
of the United States

Washington, D.C. 20548

Bucy

Decision

Matter of: Automated Datatron, Inc.

File: B-231411

Date: August 11, 1988

DIGEST

Failure to acknowledge a solicitation amendment that reduces the quantity to be ordered may be waived, and the bid accepted, since the amendment imposed no additional obligations on the bidder other than those stated in the original invitation, and there is no evidence to show that the amendment would have had any impact on the firm's bid price.

DECISION

Automated Datatron, Inc. (ADI), protests the rejection of its low bid under invitation for bids (IFB) No. B456-5, issued by the Government Printing Office (GPO) for duplicating government-furnished microfiche and then collating, packaging and distributing the duplicates. GPO rejected ADI's bid as nonresponsive because the firm failed to acknowledge amendment No. 1, which was issued on March 25 (bid opening was March 31), and which reduced the average estimated number of microfiche to be ordered over the 4-year life of the contract from 48 million--1 million per week--to 36 million--750,000 per week.

We sustain the protest.

ADI states that it has no record of the amendment being received in its corporate headquarters or its production facility. ADI further argues that, in any event, the amendment was not material. In this respect, a bidder's failure to acknowledge an amendment to an IFB renders a bid nonresponsive, as a general matter, only if the amendment was material; absent acknowledgment, the government's

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acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. Canvas & Leather Bag Co., Inc., B-227100, July 24, 1987, 87-2 CPD ¶ 85. ADI asserts that in preparing its bid it suspected GPO would not even order as much as 36 million microfiche, so that it already had based its per microfiche bid of \$.0525 on a quantity below the revised GPO figure. ADI argues that the amendment thus had no effect on its bid price. GPO responds only that the materiality of the amendment is apparent from the fact that it reduced the estimated quantity by one-quarter which, in GPO's view, could have had more than a trivial impact on the bid price.

We see no reason not to accept ADI's bid. The calculation of 1 million microfiche per week (48 million over the contract's 48-week span) is derived by multiplying the average number of sets per week, 400, by the average number of microfiche prints per set, 2,500.^{1/} The 12 million microfiche reduction reflected in the amendment is based on the amendment's reduction of the average number of sets per week to 300; that figure times 2,500 equals 750,000 microfiche per week, or 36 million per year. The specifications, however, already cautioned that anywhere between 50 and 1,500 sets could be ordered at a time--400 was just an average figure. Also, the amendment did not change the average number of microfiche per order from the stated average of 2,500, and according to the specifications the contractor had to be prepared for as few as 375 microfiche per order. Thus, under the IFB as issued--that is, without consideration of the amendment--prospective bidders knew they might be called on for only 18,750 microfiche per week (50 sets times 375), or 900,000 over the contract's 48-week term.


In view of the fact that the IFB effectively warned bidders to structure their bid prices to take into account the possibility that the government might order significantly less than the average amount, we see no reason to question ADI's assertion that the quantity reduction effected by the amendment would have had no impact on the firm's bid price per microfiche anyway. GPO's suggestion otherwise, without further explanation--as stated above, the agency simply speculates that the 12 million microfiche reduction would have had more than a trivial effect on a bid--is not persuasive. We also note that the firm awarded the contract

^{1/} An average of 25 print orders per week times an average of 100 government-furnished microfiche for duplication per order.

in the procurement, Microform, Inc., in commenting on the protest and GPO's report, has not commented on the agency's view in that regard.

We have permitted waiver of a bidder's failure to acknowledge an IFB amendment reducing the quantity of items to be ordered where it was clear from the solicitation's structure or the offers that the bidders, in calculating their prices, already had taken into account the economies of scale reflected in the fact that costs per unit generally decline as the number of units increases. See Gibraltar Industries, Inc., B-218537.3, July 3, 1985, 85-2 CPD ¶ 24. Since that appears to have been the case here, and since acceptance of ADI's bid obviously would meet GPO's quantity needs at the lowest price to the government, the bid should not have been rejected.

The protest is sustained. GPO advises that it suspended performance of Microform's contract when ADI filed its protest. Therefore, by separate letter to the Public Printer, we are recommending that Microform's contract be terminated for the convenience of the government, and that a contract be awarded to ADI, if otherwise appropriate.


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