



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Consolidated Photocopy Company, Inc.

File: B-234137

Date: April 18, 1989

DIGEST

1. The apparent low bid on a contract for maintenance of photocopiers is not unbalanced where there is no evidence that bid contained both overstated and understated prices and where there is no reasonable doubt that acceptance of bid will result in the lowest ultimate cost to the government.

2. Where invitation for bids required bidders to submit questions in writing, agency's failure to provide written notice to all bidders of one bidder's oral question and agency's response, in which agency merely reiterated information contained in the solicitation, is harmless.

DECISION

Consolidated Photocopy Company, Inc. (CPC), protests the award of a contract to Xerox Corporation under invitation for bids (IFB) No. MDA903-89-B-0004, issued by Defense Supply Service-Washington (DSSW). CPC principally contends that the agency should have rejected Xerox's low bid as nonresponsive because it was mathematically and materially unbalanced.

We deny the protest.

On December 1, 1988, the agency issued the IFB for a fixed-price requirements contract for preventive and remedial maintenance of government-owned Xerox copiers (models identified) and accessory equipment for a base period plus 2 option years. The IFB's schedule contained 124 contract line item numbers (CLINS). The solicitation provided for a single award to the low bidder and contained Federal Acquisition Regulation (FAR) clause 52.217-5, providing for evaluation of options and reserving the agency's right to reject materially unbalanced bids.

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The agency received three bids on January 4, 1989, and Xerox was evaluated as the low bidder. On January 12, CPC filed this protest against acceptance of Xerox's bid.

CPC alleges that Xerox's bid contains approximately 33 CLINS that are unbalanced (with overstated and understated prices) which also renders the bid materially unbalanced. In support of its contention, the protester has submitted, as its only evidence, a General Services Administration (GSA) Federal Supply Schedule price list for Xerox equipment and services for fiscal year 1989; the protester argues that since Xerox offered DSSW a lower price for some CLINS and a higher price for other CLINS than it agreed to in its GSA contract, its bid must be unbalanced.

Based on the record before us, we are unable to conclude that the Xerox bid is unbalanced. For one thing, there is a considerable difference between the DSSW solicitation and the GSA contract. The GSA agreement excludes supplies; the DSSW solicitation requires a contractor to furnish all supplies exclusive of paper. The solicitation requires a response time of 4 hours for routine service and 2 hours for emergencies, and provides for liquidated damages for any delay in repairs; the GSA contract calls for service within 9 of the contractor's regular working hours. Also, contract length, insurance requirements and payment terms differ, as do many of the standard solicitation terms. Thus, we do not find that the different prices offered to GSA by Xerox, on the models also appearing in the DSSW solicitation, indicate that the bid is unbalanced with regard to those models since the bid reflects different needs and involves different obligations. We also note that a majority of the CLINS for which Xerox allegedly bid enhanced prices are priced below the prices bid by the protester. Accordingly, since the record fails to show that Xerox's bid contained both overstated prices for some work and understated prices for other work, we do not find the Xerox bid to be unbalanced. See Durable, Inc., B-228911, Nov. 3, 1987, 87-2 CPD ¶ 442.

CPC also objects to the agency's failure to notify all bidders of an oral inquiry from Xerox prior to bid opening, evidencing preferential treatment in favor of Xerox.^{1/} The

^{1/} Clause L-6 of the solicitation reads in part: "No information concerning this solicitation or request for clarification will be provided in response to telephone calls from bidders. All such requests shall be made in writing and submitted to the [contract specialist].

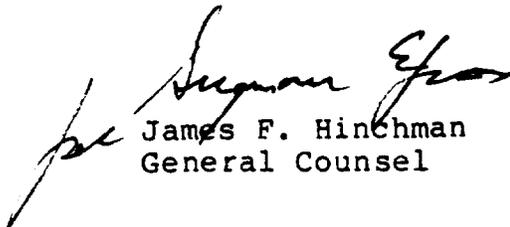
(continued...)

protester argues that the agency was obligated to advise other bidders of Xerox's question and the agency's response.

The agency reports that some time before bid opening, a Xerox representative spoke by telephone with the contract specialist about the evaluation scheme; the specialist reports that, in response, she merely read the Xerox representative the appropriate solicitation language regarding bid evaluation.^{2/}

We regard Clause L-6 of the solicitation as a reminder to bidders that under FAR § 52.214-6, incorporated into the solicitation by reference, any reliance upon oral explanations would be at the bidder's own risk. See A.R.S. Construction Co., B-228476, Jan. 27, 1988, 88-1 CPD ¶ 82. Further, since Clause L-6 was intended to insure that all bidders competed on an equal basis, its provisions were served since the agency's response to Xerox was no more than a reiteration of language already appearing in the IFB. Despite the protester's objections to what it terms "discussions" on a vital and material solicitation matter--the IFB evaluation scheme--it offers no basis upon which our Office might conclude that the agency's failure to notify CPC of the Xerox inquiry was other than harmless.

The protest is denied.


James F. Hinchman
General Counsel

^{1/}(...continued)

Written inquiries will be answered in writing and provided to all bidders."

^{2/} Each CLIN called for a price per copier per month; at the end of the schedule appeared the following language: "FIGURE 'TOTAL AMOUNT' BY ADDING 'PRICE PER COPIER PER MONTH' COLUMN AND MULTIPLYING BY TWELVE (12) MONTHS." This is the language to which Xerox was referred.