

Ms. Cooper



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Colorado Container Corporation
File: B-238670
Date: May 31, 1990

Alfred J. Schmidt, for the protester.
Sherry Kinland Kaswell, Esq., and Justin P. Patterson, Esq.,
Office of the Solicitor, Department of the Interior, for
the agency.
Sabina K. Cooper, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Bid that modified requirements of an invitation for bids by adding an additional sub-line item is nonresponsive since it contained a material deviation from the terms of the invitation for bids which imposed conditions resulting in a competitive advantage to that bidder.

DECISION

Colorado Container Corporation protests the rejection of its bid as nonresponsive and the award to Ravenna Packaging Corporation of one of three lots under invitation for bids (IFB) No. 0-4507, issued by the Department of the Interior, U.S. Geological Survey (USGS), for map cartons and mailers. Colorado challenges USGS' determination that its low bid on lot No. 2 was ambiguous.

We deny the protest.

The IFB, issued on October 30, 1989, called for an indefinite delivery-requirements contract, under which USGS would not guarantee that it would order any specific quantity of any line item. The lot at issue consisted of 10 line items totaling an estimated quantity of 124,500 triangular map mailers. Each line item provided an estimated quantity and allowed bidders to insert a firm, fixed-unit price and an extended price. The IFB further required bidders to indicate whether dies for manufacturing the products were, or were not, available and, under the

048631 / 141479

heading "Availability of Manufacturing Die," required the bidder to certify the following:

"I hereby certify that to conform to the invitation for bids and be able to furnish an exact product required in the solicitation, I _____ do _____ do not have in my possession, a die or dies that are necessary to complete the performance of this contract.

"If bidder does not have a die, provide evidence in the form of a narrative as to availability of the die, and other documentation to assure the Government that the die or dies will be available at the time of award of a contract: [space provided for answers]."

The IFB also required the contractor to "furnish all facilities, labor, and materials to provide goods/services in accordance with the terms and conditions herein . . ."

USGS received 10 bids by the December 12 bid opening. Colorado was the apparent low bidder on lot No. 2 at \$48,570. However, USGS rejected Colorado's bid as non-responsive because the firm had added the words "if manufacturing die not available," with a price ranging from \$407 to \$663 on the same line, below each of the 10 line items of lot No. 2. Colorado's bid also indicated that dies for manufacturing the products were not available and certified that the firm did not have the necessary dies in its possession. In its narrative following the certification, Colorado wrote:

"Upon release by U.S.G.S. to current holders of dies, Colorado Container will pickup dies. If dies are not available, U.S.G.S. will be responsible for cost of dies. Prices are shown in section B under appropriate items."

USGS found that Colorado's bid was rendered conditional and ambiguous by the firm's notations and that sealed bidding procedures prevented the contracting officer from further questioning Colorado. USGS also rejected the second and third low bids as nonresponsive and made award to Ravenna, the fourth low bidder at \$64,945, on January 16, 1990. Colorado filed a bid protest in our Office February 20, after its agency protest was denied by USGS.

To be responsive, a bid must comply in all material respects with the IFB. See Federal Acquisition Regulation (FAR) §§ 14.301(a) and (c). A bidder's intention to be bound by the solicitation requirements must be determined from the

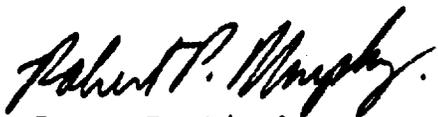
bid itself at the time of bid opening. Franklin Instrument Co., Inc., B-204311, Feb. 8, 1982, 82-1 CPD ¶ 105. Under FAR § 14.404-2(d), a bid must be rejected where the bidder attempts to impose conditions that modify requirements of the IFB or limit the bidder's liability to the government, since allowing the bidder to impose such conditions would be prejudicial to other bidders. See Gelco Payment Sys., Inc., B-234957, July 10, 1989, 89-2 CPD ¶ 27.

Here, the IFB did not indicate that the government would furnish the dies or that it intended to purchase the dies from the contractor. Nor did the solicitation lead bidders to assume that USGS had control over the current holders of the dies. Rather, the IFB clearly required bidders to provide "all facilities, labor and materials needed . . ." In addition, USGS deliberately elected not to separately price and take title to the dies, since the relative cost of the dies was not large enough to justify making the dies government-furnished property.

By adding unit prices for the dies in the event that dies were not provided by USGS, Colorado qualified its bid by making the contract award contingent upon a condition not specified in the IFB. Moreover, Colorado introduced an ambiguity into its bid by adding additional line items making it unclear when the sub-line items for the dies would be payable or which party would have title to the dies. Colorado also would have a competitive advantage over other bidders by separately pricing the dies, since Colorado would not have amortized the cost of the dies over the total estimated orders and should recover that cost separately.

Accordingly, Colorado's bid did not represent an unequivocal agreement to the material terms of the IFB and thus was properly rejected as nonresponsive. Giant Life Equip. Mfg. Co., Inc., 63 Comp. Gen. 375 (1984), 84-1 CPD ¶ 542.

The protest is denied.


for James F. Hinchman
General Counsel