

Ms. Gilhooly



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gateway Press, Inc.

File: B-240826

Date: December 21, 1990

Frederic G. Antoun, Jr. Esq., for the protester.
Kerry L. Miller, Esq., United States Government Printing Office, for the agency.
Kathleen A. Gilhooly, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where invitation for bids (IFB) required a specific typeface or manufacturer's generic equivalent, agency properly rejected as nonresponsive a bid that offered a typeface determined not to be a generic equivalent, since the bidder did not agree to provide precisely what was called for in the IFB.

DECISION

Gateway Press, Inc. protests the award of a contract to any other bidder under invitation for bids (IFB) Program No. B134-S, issued by the United States Government Printing Office (GPO) for the printing of the Army Reserve Magazine. Gateway contends the agency improperly rejected its low bid as nonresponsive.

We deny the protest.

The IFB required bidders to use certain designated typefaces or manufacturer's generic equivalents. Specifically, the IFB provided:

Typefaces and Sizes: The contractor is required to furnish the following:

- Eras Ultra, 48 thru 72 point.
- Helvetica with Italic and Bold, 6 thru 12 point.
- Helvetica medium with Italic, 6 thru 60 point.
- Helvetica Condensed, 6 thru 72 point.
- Times Roman with Italic and Bold, 8 thru 24 point.
- Helvetica typeface weights must match the typeface weights on the attached "Helvetica Type Specimens" sheet.

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No alternate typefaces will be allowed; however, manufacturers' generic equivalents will be accepted for the above typefaces. Each bidder shall list in the bid the name of the generic equivalent typeface(s) and composing machine to be used.

The GPO reserves the right to require samples of any generic equivalent typefaces offered if it is deemed necessary in order to determine the suitability of the offered typefaces.

The IFB elsewhere provided space for bidders to list any manufacturer's generic equivalent typefaces they propose to use.

Gateway listed in its bid "Avant Garde Bold, 48 thru 72 point" as a manufacturer's generic equivalent typeface for the "Eras Ultra, 48 thru 72 point." GPO determined that the Avant Garde Bold typeface was not a generic equivalent to Eras Ultra, and notified Gateway that its bid was nonresponsive because it failed to furnish all acceptable required typefaces.^{1/}

Gateway protests that the question whether the typeface it offered is a generic equivalent to the typeface named in the solicitation is a matter of bidder responsibility, rather than bid responsiveness, and therefore Gateway should have been allowed to substitute the Eras Ultra typeface once GPO determined that the typeface Gateway listed as a manufacturer's generic equivalent was not suitable.

The responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the exact thing called for in the solicitation, so that, upon acceptance, the bidder will be bound to perform in accordance with all of the IFB's material terms and conditions. The ARO Corp., B-222486, June 25, 1986, 86-2 CPD ¶ 6. Only where a bidder provides information with its bid that reduces limits or modifies a material IFB requirement may the bid be rejected as nonresponsive. Gardner Zemke Co., B-238334, Apr. 5, 1990, 90-1 CPD ¶ 372.

Responsibility, on the other hand, refers to the bidder's ability or capacity to perform all contract requirements and is determined not at bid opening, but at any time prior to award, based on any information received by the agency up to that time. Id.

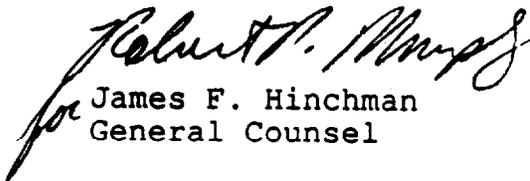
The IFB required bidders to furnish an Eras Ultra, 48 thru 72 point, typeface or a manufacturer's generic equivalent. As indicated above, GPO determined that the typeface listed by

^{1/} Gateway's bid appears to be otherwise responsive.

Gateway in its bid was not a generic equivalent to Eras Ultra. Our review indicates there are significant differences between Eras Ultra and Avant Garde Bold. Indeed, Gateway does not argue in its protest that Avant Garde Bold is a generic equivalent to Eras Ultra, but states in its comments on the report that it accepts GPO's determination in this regard. By listing in its bid the name of a typeface that was not a manufacturer's generic equivalent to Eras Ultra, Gateway did not agree to supply precisely what was called for in the solicitation. Acceptance of Gateway's bid would only legally obligate the company to furnish Avant Garde Bold, and not Eras Ultra or its generic equivalent.

Gateway argues that the suitability of offered typefaces has nothing to do with bid responsiveness because GPO reserved in the IFB the right to require, at any time, samples of any generic equivalent typeface offered. We agree that where samples are used to determine the responsiveness of a bid, they must be submitted by bid opening. See Barrett Carpet Mills, Inc., B-228507, Jan. 12, 1988, 88-1 CPD ¶ 20; ATD-American Co., B-214859, Aug. 27, 1984, 84-2 CPD ¶ 229. However, in this case, no samples were solicited or submitted. Instead, GPO was able to determine, apparently based on its own knowledge of Avant Garde Bold typeface, that Gateway's offered typeface did not meet IFB requirements. Since the bidders were required to identify in their bids any generic equivalents, this was clearly a matter of bid responsiveness, inasmuch as it directly related to the acceptability of the product offered by the bidder, rather than its capacity to perform this contract, which is a matter involving responsibility. Since Gateway's bid did not legally bind it to provide the required typeface, no post bid opening explanations or substitutions of the requested typeface could be allowed. See Aerial Machine & Tool Corp., B-234052, Jan. 13, 1989, 89-1 CPD ¶ 41. Therefore, Gateway's bid was properly rejected as nonresponsive.

The protest is denied.


for James F. Hinchman
General Counsel