



## Decision

**Matter of:** Gladding Braided Products

**File:** B-260885

**Date:** July 25, 1995

Donald H. Christakos for the protester.  
Rachel A. Pacheco for Hope Webbing Co., and James W. Turner for Mills Manufacturing Corp., interested parties.  
Michelle Harrell, Esq., and Turhan E. Robinson, Esq., General Services Administration, for the agency.  
Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Contracting officer's decision not to permit bid correction was reasonable since at the time of bid opening the bid offered less than the government's estimated peak monthly requirements and was therefore nonresponsive on its face; since responsiveness cannot be established after bid opening, mistake in bid procedures may not be used to correct a nonresponsive bid.

### DECISION

Gladding Braided Products protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 7FXI-P7-94-4004-S, issued by the General Services Administration (GSA) for spools of nylon cord. Gladding contends that the agency unreasonably denied its request to correct a clerical mistake in its bid and improperly rejected its bid for failure to acknowledge an amendment to the solicitation.

We deny the protest.

GSA issued the IFB on December 19, 1994, contemplating the award of a fixed-priced, indefinite quantity requirements contract for a 2-year period with 3 option years. The IFB solicited bids for various estimated quantities of nylon cord to be delivered to different locations listed on the bid schedule as four separate line items. The bid schedule contained a blank space for bidders to insert separate unit prices for any or all of the four line items. Award was to be made on an item-by-item basis to the low responsive, responsible bidder.

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Amendment 1, issued on January 18, 1995, deleted the option to extend the term of the contract clause, the evaluation of option clause and the economic price adjustment clause. It provided a revised bid schedule for the four line items and extended the bid opening date from January 20 to February 7.

As relevant here, the amended IFB contains a clause entitled "Frequency of Orders," which provides that:

". . . the number of orders expected to be placed during the contract period is shown in the Schedule in parenthesis next to the estimated peak monthly requirements shown for each item. . . ."  
(Emphasis added.)

The IFB also contains a monthly supply potential (MSP) clause which requires bidders to insert the total quantity of nylon cord they are willing to deliver per month to each of the four locations. The MSP clause specifically warns bidders that in order to qualify for an award their MSP must, at a minimum, equal the agency's estimated peak monthly requirement for each line item as listed on the bid schedule.

The agency's estimated peak monthly requirements and the estimated number of orders to be placed for each line item were set forth in the bid schedule as follows:

Item No.	Destination	Est. Peak Monthly Reqmt.	Est. 2 yr. Reqmt.	Unit of Issue	Unit Price
1	Palmetto, GA (A1)	(40) 572	9,120	SL	\$_____
2	Fort Worth, TX (F1)	(31) 324	5,208	SL	\$_____
3	Burlington, NJ (N3)	(50) 816	11,820	SL	\$_____
4	Stockton, CA (S1)	(50) 892	12,872	SL	\$_____

Four bids were received by the amended February 7 bid opening date. Gladding was the apparent low bidder for line items 1-3, and the apparent second low bidder for line item 4; however, Gladding did not acknowledge receipt of amendment 1. In examining Gladding's bid, the contracting officer discovered that the protester had inserted in the MSP clause "171 each" for line items 1-4 which was significantly less than the agency's stated MSP for the corresponding line items. Gladding's bid was rejected as nonresponsive for failing to offer a sufficient MSP to meet the government's estimated peak monthly requirement for any one line item. By letter dated February 17, Gladding was notified that its bid had been rejected on this basis.

Gladding then filed an agency-level protest challenging the rejection of its bid. The protester alleged that it had made a clerical mistake in its bid by inadvertently including the sum of the estimated number of orders (the parenthetical numbers under the estimated peak monthly requirements column, shown above) as its MSP for each line item. The firm attributes this alleged clerical mistake to misleading and poorly written IFB provisions and insists that it intended to offer an MSP equal to that required by the solicitation for each line item.

The contracting officer denied the protester's request to correct its bid based on his conclusion that the bid was nonresponsive as submitted and could not be corrected under the mistake in bid procedures after bid opening. While Gladding's mistake in bid claim was being considered, the contracting officer realized that the firm had not acknowledged receipt of amendment 1. Because the agency considered the amendment a material change to the IFB, it concluded that Gladding's bid was nonresponsive for failure to acknowledge the amendment. As a result, GSA denied Gladding's agency-level protest and advised the firm of the additional basis for rejecting its bid. This protest followed.

We think the protester's bid was properly rejected because the bid did not establish the required commitment to the peak monthly levels. The MSP clause at issue here concerns the bidder's obligation to fill all orders for the items awarded during any one calendar month which do not exceed the bidder's offered MSP. As such, it is a material term of the IFB and a matter of bid responsiveness because it involves a performance commitment by the bidder. Medical Depot Supplies Corp., B-239342, Aug. 22, 1990, 90-2 CPD ¶ 149; Utica Cutlery Co., B-167242, Sept. 4, 1969.

Thus, a bid which offers less than the government's estimated peak monthly requirements for each line item must be rejected as nonresponsive since the bid does not unequivocally offer to provide the requested items in total conformance with the terms and specifications of the IFB. Happy Penguin, Inc., B-202231, June 16, 1981, 81-1 CPD ¶ 497. Here, since Gladding failed to offer a MSP that would meet or exceed the agency's estimated peak monthly requirements, the contracting officer properly rejected the firm's bid as nonresponsive on its face because acceptance of Gladding's bid would not legally obligate the firm to satisfy the agency's monthly peak requirements.<sup>1</sup>

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<sup>1</sup>The protester's MSP of "171 each" for the four line items is significantly less than GSA's stated estimates which ranged from 324 to 892 per month for each location.

Gladding maintains that the solicitation language was misleading and that the error in its bid is clerical in nature and can be waived. As noted previously, the IFB clearly stated that the estimated number of orders to be issued during the contract term for each line item appears on the bid schedule as parenthetical numbers. In addition, the MSP clause also directed bidders to the bid schedule where the agency's estimated peak monthly requirements were listed for each line under the same column/heading as the parenthetical numbers which correspond to the estimated number of orders to be issued. The mere fact that both numerical estimates appear under the same column/heading in the bid schedule does not, in and of itself, provide a basis for concluding that the IFB provisions were impermissibly misleading. We think the IFB reasonably informed bidders of what was required in preparing their bids. See Southern California Eng'g Co., Inc., B-255945, Apr. 20, 1994, 94-1 CPD ¶ 271.

Under these circumstances, the contracting officer properly declined to permit Gladding to correct its bid. Because the bid offered to furnish less than the required MSP, it was nonresponsive and cannot be made responsive by post-bid opening explanation or correction. Since responsiveness is determined from the face of the bid itself at bid opening, to have allowed Gladding to change its bid would have been tantamount to permitting the firm to submit a new bid. See Federal Acquisition Regulation (FAR) § 14.406-3; Basil Equip. Corp., B-237335, Feb. 13, 1990, 90-1 CPD ¶ 187.<sup>2</sup>

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<sup>2</sup>Gladding further argues that the "table" in the solicitation on which bidders could enter their proposed MSP was optional and therefore nonessential. To the contrary, the requirement to meet the peak monthly amounts for the items for the line items was not optional. While the MSP clause at issue here invited bidders "to indicate, in the spaces provided . . ." the total quantity per month of nylon cord they were willing to provide, it also advised that if an amount was not entered in the spaces provided, the bidder would be deemed to offer to furnish 125 percent of the government's estimated peak monthly requirement for the item or group of items. We read the solicitation provision as giving prospective bidders an opportunity to limit, if they so choose, the number of orders they would be obligated to fill in excess of the agency's estimated peak monthly requirements. The bidder had the option of not inserting any numbers--which would indicate that the bidder offered to furnish the 125 percent of the government's peak requirements for each line item--or inserting specific amounts in excess of the stated requirements. Thus, contrary to the protester's position, this provision is an  
(continued...)

As noted above, the agency also concluded that Gladding's bid was nonresponsive for failure to acknowledge amendment 1. Gladding argues that rejection of its bid on this basis was improper because Gladding never received amendment 1 and, in Gladding's view, amendment 1 did not make material changes to the IFB. We need not address this argument, however, since even assuming that Gladding's failure to acknowledge the amendment were waived, Gladding's bid would still be nonresponsive--and thus ineligible for award--due to its failure to offer sufficient MSP to meet the government's estimated peak monthly requirements. See Bootz Distribution, B-251155, Feb. 10, 1993, 93-1 CPD ¶ 123.

The protest is denied.

/s/ Christine S. Melody  
for Robert P. Murphy  
General Counsel

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<sup>2</sup>(...continued)

essential provision of the IFB which unequivocally sets forth the rights and obligations of the agency and the prospective contractor. See Happy Penguin, Inc., supra.