

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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97155

FILE: B-183716

DATE: June 25, 1975

MATTER OF: General Services Administration - Request
for advance decision

DIGEST:

1. METHOD OF AWARD clause of IFB required that bidders insert percentages indicating deductions or additions to rate schedules in column headed "Offeror's Single Discount." Failure of bidders to affirmatively include indicators, e.g. "plus" or "minus" with percentages did not render bids nonresponsive. Bidders complied with clause since column heading was labeled "discount" which obviated necessity for further indication that inserted percentages were of negative nature. Mistake in bid procedures are inapplicable because situation does not involve omission of items required in bid by IFB and resort to examination of bidding patterns is unnecessary.
2. Recommendation to GSA is made that future solicitations requiring bidders to indicate percentage either as addition to, or deduction from, established rate schedules should provide bidders with bidding schedule compatible with METHOD OF AWARD clause.

On November 19, 1974, invitation for bids (IFB) 10PN-GPS-5640 was issued by the General Services Administration (GSA), for motor vehicle rental (without driver) for the period March 1, 1975, or date of award, through February 29, 1976, covering several service areas. Nineteen bids were received in response to the IFB and opened on December 10, 1974.

The METHOD OF AWARD clause in the instant IFB provides:

"METHOD OF AWARD: Award will be made to the responsible offeror who offers the lowest price in the form of a single percentage as a deduction from or addition to the stated rate schedule offered for each service area for all rental periods specified (i.e. daily, hourly, weekly mileage) for each type of vehicle.

"Deletion or changes to the prices shown in the offer schedules will be the cause for rejection of the offer for that vehicle for that service area. In order to be considered for an award, offeror must insert a percentage indicating whether it is a deduction or an addition, the word 'net' or '0' in the offer schedule for the service area and type of vehicle for which he intends an offer. In absence of either a percentage, 'net' or '0', it will be deemed that 'no bid' is intended."

The bidding schedules contain a single column entitled "Offeror's Single Discount," adjacent to stated rate schedules, enabling bidders to insert their bids in the form of a percentage "net," or "0."

Upon evaluation of the bids, the contracting officer believed that six bidders had made mistakes by the omission of indicators (e.g., "plus" or "minus") to the percentages inserted in the "Offeror's Single Discount" column. Three of those bidders, who are not the subject of this particular matter, were notified of the suspected mistake. Two confirmed that the percentage indicator should have been a "minus" or "negative" and were awarded contracts for certain areas. The remaining bidder indicated that it intended a "plus" 10-percent discount and was not awarded a contract.

The contracting officer requested from the three other bidders, Dollar A Day Rent-A-Car, Huling Rent-A-Car, and Thrifty Rent-A-Car, verification of their bids and documentation to establish the alleged mistakes. Thereafter, the contracting officer, in a "Findings and Determination" dated March 6, 1975, stated:

"* * * All offerors alleging a mistake confirmed this by letter and all confirmed their intended offer as a percentage deduction from rates contained in the solicitation."

* * * * *

"It is obvious from an examination of the offers submitted that an error was made. It is the opinion of the contracting officer that it is equally obvious on the face of the bid, the bid actually intended."

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However, by letter dated January 23, 1975, counsel for licensees of the Airways Rent-A-Car System (Airways) protested to GSA that the mistake corrections should not be permitted and that the bidders were, in essence, nonresponsive.

As a result of the foregoing, the contracting officer has recommended that these bidders be permitted to correct their bids. However, due to the doubtful nature of this matter, the General Counsel of GSA has requested an advance decision pursuant to the Federal Procurement Regulations § 1-2.406-3(e) (June 1964, Circ. 1) from our Office.

The GSA General Counsel, relying upon B-157429, August 19, 1965, has also recommended correction of the bids in question. Counsel for Airways has argued to the contrary, i.e., that the mistakes should not be entitled to correction, placing reliance upon 52 Comp. Gen. 604 (1972). Our Office, however, does not view the question presented as one for resolution under the mistake in bid procedures and the decisions of our Office thereunder. The above decisions involved situations where bidders had omitted portions of bids called for by the terms of the various invitations and our Office examined overall patterns of bidding to establish and permit correction of the omitted portions under the mistake in bid procedures. We concluded that to have converted obvious clerical errors into matters of nonresponsiveness would have been patently inconsistent with the reported facts.

In our opinion, the instant situation can be distinguished from the above cases in that here, we are not dealing with the omission of required items in bids. Rather, the bidders' responses were in full compliance with the METHOD OF AWARD clause of the IFB since the heading of the column in which their bids were placed was clearly labeled "discount." While we recognize that the METHOD OF AWARD clause would appear to contemplate that a bidder insert affirmative indicators with the percentages, the "discount" column heading in the bidding schedules obviated the necessity for such an affirmative indication when bidding in a negative manner. Thus, there was no necessity for the bidders to have further indicated that the inserted percentages were of a negative nature. In our opinion, an affirmative act, such as, for example, the placing of a "+" in front of a bid would have been necessary to bid an increased amount, negating the effect of the "discount" heading of the bid column. As mentioned above, at least one other bidder employed this method of bidding.

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Moreover, in view of the above, our Office cannot agree with counsel for Airways that the bids in question were nonresponsive.

Therefore, the bids in question should be considered for award. This decision does not adversely affect the determinations made as to the acceptance or rejection of the three other bids mentioned above, as, we understand from GSA, the results remain the same.

However, to avoid questions like this from arising in future procurements, we recommend that solicitations of this nature be drafted so as to provide prospective bidders with a bidding schedule compatible with the METHOD OF AWARD clause.


Deputy Comptroller General
of the United States