

DECISION



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

60549

FILE: B-184457

DATE: February 20, 1976

MATTER OF: Rentex Services Corporation

098574

DIGEST:

1. IFB's "Small Requirements" clause obligated contractor to accept orders of \$5.00 or more unless he indicated his willingness to accept orders of less than \$5.00 by inserting a smaller amount in bid form. Bid which provided that orders for less than \$5.00 would not be accepted and contained insertion of "\$10.00" as minimum acceptable order was properly rejected as nonresponsive as it limited the Government's right to place orders between \$5.00 and \$10.00.
2. In prior decision of our Office with virtually identical facts and issue, GAO recommended that GSA clarify ambiguous clause in solicitation. Inadvertent omission of revised clause in present solicitation does not excuse nonresponsive bid since clause, as written, is legally operable and not fundamentally defective.

Rentex Services Corporation (Rentex) has protested the contract award to Magic Carpet Rental Services, Inc. pursuant to invitation for bids (IFB) No. FSS-IG-721.5-2-76 issued by the Federal Supply Service, General Services Administration (GSA).

The low bid submitted by Rentex was declared nonresponsive, because the bid did not conform to the "Small Requirements" clause contained in the IFB. Although the solicitation required the contractor to accept any order in excess of \$5.00, Rentex indicated that it would accept a minimum order of \$10.00.

Under Part I of the "Special Provisions" of the IFB entitled "Scope of Contract," the following provisions dealing with the respective obligations of ordering agencies and bidders to place and accept orders in certain minimum amounts states:

"Small Requirements: No ordering office will be obligated to place any order requiring delivery to any one destination amounting to \$5.00 or less. This provision also applies to the contractor unless otherwise indicated below:

Offeror is asked to indicate by (checking the applicable box) whether he will or will not accept orders requiring delivery to any one destination amounting to \$5.00 or less; or whether he will accept small orders of a specific minimum below \$5.00. Specific Minimum \$_____. If 'will' is checked or a specific minimum below \$5.00 is entered it is mutually agreed that the contractor will accept small orders as indicated and this information will be shown in the resultant schedule and applicable contractor catalog/price list.

If the offeror fails to furnish the information asked for above the Government may place orders for deliveries to any one destination amounting to \$5.00 or less. Failure on the part of the contractor to return such orders by mailing or otherwise furnishing them to the ordering office within 3 days after receipt shall constitute acceptance whereupon all other provisions of the contract shall apply to such order."

Rentex checked the "will not" box and inserted "\$10.00" in the Specific Minimum blank.

Essentially, Rentex protested the rejection of its bid on two grounds. First, Rentex alleges that it did correctly respond to the specific questions asked in the clause, and by inserting a minimum figure, Rentex supplied additional and gratuitous information which the contracting officer should have disregarded. Secondly, Rentex argues that any confusion in its response to the IFB was due to the omission in the solicitation of the revised Small Requirements clause prescribed by Federal Supply Schedule Procurement Letter No. 109-4 of December 5, 1974.

The "Small Requirements" clause was revised in response to a recommendation made by our Office in an earlier decision, Page Airways, Inc., 54 Comp. Gen. 120 (1974), 74-2 CPD 99 at 15. The facts and issue in that case are virtually identical to

those in the instant situation. There, the protester inserted a specific minimum figure higher than \$50.00, which was the minimum order contained in the "Small Requirements" clause of the solicitation. GSA responded to the protest as follows:

"It is clear that this clause, as written, could only have one reasonable, logical interpretation. What the clause says, essentially, is this: Contractors are obligated to accept all orders except as specifically provided by the clause. One of the expressed exceptions is that he is not obligated to accept orders for less than \$50.00. However, should he wish to accept any orders between \$0 and \$50.00 he is given an opportunity to accept such lesser orders by indication. It is unequivocal that the purpose of the clause is to allow a contractor to accept orders less than the minimum order limitation and not to allow a bidder to qualify his bid so that he could choose, to his own advantage, whatever amount of order he wishes to accept. Nowhere does the clause state '\$50.00 or more'. If the protester's theory is correct, then the Government could not reject a bid of an offeror who would not accept an order less than \$10,000--a totally unreasonable and illogical interpretation." (Emphasis in original.)

We concurred with the interpretation suggested by GSA, but agreed with the protester's contention that the provision was somewhat unclear and recommended that GSA revise that portion of the solicitation to achieve greater clarity. Accordingly, GSA did revise the clause in Procurement Letter 109-4, but inadvertently failed to substitute the new revised clause for the original provision in the instant solicitation.

While the omission of the revised clause was unfortunate, we conclude that our original decision in 54 Comp. Gen. 120, supra still controls. It is our view that the clause, as written, is legally operable and not fundamentally defective. We cannot agree with Rentex that the inclusion of a specific minimum figure of \$10.00 was gratuitous information, since Rentex if awarded the contract, would not be bound to accept orders in lesser amounts under its terms. Furthermore, it is a general principle of contract law that the responsiveness of a bid must be judged from the bid itself and without the benefit of subsequent explanations by the bidder as to what it intended. 51 Comp. Gen. 352 (1971); 50 id. 302.

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In view of the foregoing, we believe the contracting officer acted properly in determining Rentex's bid to be non-responsive. Accordingly, the protest is denied.


Deputy Comptroller General
of the United States