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**DECISION**



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

**FILE: B-187477**

**DATE: March 15, 1977**

**MATTER OF: Leavitt Machine Company**

**DIGEST:**

Although protester contends language it added to solicitation was merely surplusage, Navy's interpretation to effect that bidder did not intend to furnish stellite valve and other test equipment for first article test was reasonable under circumstances. Since bid was subject to more than one interpretation, one of which makes bid nonresponsive, bid was properly rejected.

Leavitt Machine Company (Leavitt) protests against the rejection of its bid under solicitation No. N00107-76-B-0665, issued by the Department of the Navy (Navy), Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania, and the subsequent award of a contract to the Micral Manufacturing Co., Inc. Leavitt's bid was determined to be nonresponsive by the contracting officer and was therefore rejected.

The solicitation was issued on April 28, 1976, for the procurement of one line item known as a valve reseating outfit. The solicitation provided for a requirements type contract with an estimated yearly usage of 220 units with individual order limitations of 40 minimum units and 85 maximum units. Twenty-four potential sources of supply were solicited with 11 sources submitting bids.

On page 11 of Leavitt's bid, the following statement was inserted:

"Price quoted is based on waiver of First Article test. If First Article test is required please Add \$1,200.00 to the total of the first Order Only under said contract. Order is defined on pages 21 & 22, Section J of this solicitation."

On page 12, Leavitt inserted the following statements:

"Unit price is based on minimum-maximum order requirements as detailed on page 22, Section J (7-1102.1) of this solicitation."

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"Prices quoted above do not include any tooling, parts, material, drawings, test equipment or inventories, as the valve reseaters as specified in this solicitation are a regular product of Leavitt Machine Co."

It is the Navy's position that since Leavitt used the singular word "price" to refer to its first article price and unit price and used the plural word "prices" in its qualifying addendum on page 12, the logical interpretation is that the qualification applied to both the unit price and the price of \$1,200 for the cost of the first article test if the test were to be required.

The first article test requires the contractor to grind a leaky stellite valve seat to demonstrate the capabilities of the valve reseating machine. The Navy claims that the stellite valve to be ground has a value in excess of \$700. The Navy states that it did not intend to furnish the stellite valve required for the first article test as evidenced by the lack of Armed Services Procurement Regulation (ASPR) clause 7-104.24(f) (1976 ed.), entitled "Government-Furnished Property," from the solicitation.

The contracting officer determined that, based on the language of Leavitt's qualification, if award were made to Leavitt without waiving the first article test, Leavitt could not be contractually bound to furnish the valve. The Navy argues that because of the value of the stellite valve, this exception may not be waived as a minor informality or irregularity in a bid within the meaning of ASPR § 2-405 (1976 ed.). It is maintained by the Navy that the contracting officer acted reasonably in determining Leavitt's bid to be non-responsive.

Leavitt argues that the solicitation does not call for delivery of any tooling, parts, material, drawings, test equipment or inventories and the language added by Leavitt on page 12 is used to confirm this. Leavitt contends that "The Government's interpretation that the Contractor would be able to refuse to provide a leaky valve as a test article for a test, by reason of language which limits the deliverable items on the contract to the deliverable items called for by the contract, is unreasonable." In addition, the protester states that the requirement for the first article test was the same for all bidders and that nothing in Leavitt's bid placed it in a position different from that of other bidders. In effect, Leavitt argues that

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the language on page 12 was merely surplusage and would only have effect if the Navy waived the first article test. Furthermore, Leavitt points out that it used the identical language in similar solicitations and was awarded the contracts resulting from those solicitations.

As a general rule, it is an essential element of a valid bid that it be sufficiently definite to enable the contracting activity to accept it with confidence that the contract arising thereunder can be interpreted and enforced without resort to extraneous evidence. 43 Comp. Gen. 817 (1964). An ambiguity in a bid exists where the terms of a bid are subject to two or more reasonable interpretations. 51 Comp. Gen. 831 (1972); Beta Systems, Inc., Brown-Minneapolis MTM Tank & Fabricating Co., B-184413, February 18, 1976, 76-1 CPD 109. If under one interpretation the bid would be responsive and under the other nonresponsive, we have consistently considered the bid nonresponsive. 53 Comp. Gen. 32 (1973); Simmonds Precision, B-185469, March 18, 1976, 76-1 CPD 186.

It is our view that the language used by Leavitt on page 12 of the solicitation is subject to more than one interpretation. Looking at the language in its best light, it reasonably can be concluded that Leavitt is merely indicating an intent not to furnish anything other than what is required by the solicitation. However, we also believe it reasonably can be concluded that Leavitt has excluded from the first article testing any tooling, parts (such as a stellite valve), material, test equipment (such as a test stand and water pressure gauges) and inventories. Since the performance of a first article test requires at least some parts and test equipment, the Navy's interpretation of the language as indicating that Leavitt did not intend to furnish the stellite valve and any other equipment necessary for performance of the first article test was reasonable. Therefore, in our opinion, the Navy reasonably construed Leavitt's statement as a condition which would modify the requirements of the solicitation. Since Leavitt's bid was therefore reasonably subject to two interpretations, one of which would make the bid nonresponsive, we concur with the Navy's determination.


Moreover, Leavitt may not explain the meaning of its statement after other bids have been exposed. As we stated in 40 Comp. Gen. 393, 397 (1961):

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"\* \* \* where each of two possible meanings can be reached from the terms of a bid, the bidder should not be allowed to explain his meaning when he is in a position thereby to prejudice other bidders or to affect the responsiveness of his bid. \* \* \*"

Finally, Leavitt contends that it had used similar language in other solicitations and had been awarded the contracts under those solicitations. We have been advised that in the solicitations referred to by Leavitt, the Government waived first article testing thereby rendering Leavitt's language moot. In the instant case, the Navy has chosen not to waive first article testing, thus giving effect to Leavitt's language.

In view of the foregoing, the protest is denied.

  
Deputy Comptroller General  
of the United States