

DOCUMENT RESUME

08131 - [C3408522]

[Responsiveness of Bid Based on Performing All Work Onsite at a Government Facility]. B-192095. December 4, 1978. 6 pp.

Decision re: Cloyd Duke Gull and Associates, Inc.; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel; Transportation Law.
Organization Concerned: Department of the Army; Corps of Engineers.

Authority: 4 C.F.R. 20. B-189326 (1977). E-180356 (1978).

The protester objected to the rejection of its bid as nonresponsive. Even though the solicitation specification was unclear as to the portion of contract work which was to be performed onsite at the Government's facility, a bid which was conditioned on use of the Government facility for all of the contract work was properly rejected as nonresponsive. Due to the unclear provisions of the solicitation, the Government should determine whether the successful bidder included in its price costs for work which the agency intends to perform itself and should take appropriate remedial action. (Author/SC)

DECISION

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

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FILE: B-192095

DATE: December 4, 1978

MATTER OF: Cloyd Dake Gull and Associates, Inc.

DIGEST:

1. Where IFB required contractor performance of a portion of contract work onsite at Government's facility, bidder who conditions its bid on performing all work onsite was non-responsive since Government only offered limited use of its facility.
2. Even though IFB specification was unclear as to portion of work which contractor was required to perform onsite at Government's facility, bid which was conditioned on use of Government facility for all of contract work was properly rejected as nonresponsive.
3. GAO recommends that contracting agency should determine whether successful bidder has included in its bid price costs for work which the agency decided to perform with its own forces in lieu of performance by the contractor. If such costs have been included, appropriate action should be taken by the agency, such as contract price modification.
4. Questions having no relevance to the protest need not be answered.

Cloyd Dake Gull and Associates, Inc., the low bidder under Invitation for Bids (IFB) No. DACW31-78-B-0018, issued by the Corps of Engineers, protests the Corps' finding that its bid was nonresponsive.

The IFB required the contractor to " * * * provide all labor, materials, equipment and transportation necessary * * * to classify, catalog, process and input into Ohio College Library Center OCLC

approximately 4000 titles of Corps of Engineers Waterways Experiment Station technical reports now shelved in the Office, Chief of Engineers Library." Part I, Section C, paragraph 11 of the IFB additionally stated, "No material, labor, or facilities will be furnished by the Government unless otherwise provided for in the solicitation." (Emphasis supplied.) Amendment No. 4 to the IFB, amending Part II of the specifications, provided the following about the furnishing of facilities by the Government:

"(a) Tapes and cards will be produced through OCLC (Ohio College Library Center) terminal onsite at the Office Chief of Engineers library. * * *

* * * * *

(c) The library will provide the whole OCLC package of terminal, line and card sets. The hours spent inputting data will be governed by library hours of operation.

* * * * *

(i) * * * All inputting will be done onsite."

Cloyd conditioned its bid with the statement that "All work will be done on site at the Library, Office of Chief of Engineers." Thus the Corps makes the argument that since only inputting is specifically permitted to be performed onsite, all other work, including cataloguing, to be performed by the contractor would have to be performed at its own facilities, rendering Cloyd's bid nonresponsive.

Campbell Industries--Reconsideration, B-189356, February 3, 1978, 78-1 CPD 99, establishes that the availability or non-availability to a contractor of Government facilities can be a material requirement in an IFB which has a substantial effect upon the price of the bid. If the specifications allowed, as the Corps maintains, that Government facilities (the Library, Office of the Chief of Engineers (OCE) could be used for a portion of the work only, then Cloyd's bid, which was conditioned on performing all the work of the contract at Government facilities,

must be considered nonresponsive. See Kaiser Aerospace & Electronics Corporation, B-189326, August 2, 1977, 77-2 CPD 73.

Besides amendment 4, just quoted, part II of the specifications provided:

"II. The following criteria must be applied to each report:

1. Classification Numbers

* * * * *

(b) * * * For those reports belonging to a series for which a predetermined call number exists it must be used in accordance with the OCE library shelflist.

(c) Reports for which no call number exists must have call numbers assigned based on the Library of Congress classification schedules and verified against existing call numbers in the OCE library shelflist.

2. Descriptive Cataloging

* * * * *

(c) Verification of information used in cataloging will be done against the OCE library main card catalog, the Library of Congress National Union Catalog and the Library of Congress subject headings (latest ed.)."

Cloyd argues that since part II of the specifications required the use of the OCE library shelflist and main card catalogue, available only at the OCE library, for classification and cataloging, it is not possible to argue that the specifications allowed the use of the library for inputting only, and that therefore its bid is fully responsive.

The Corps' Supplemental Report of August 29, 1978, states: "The Contracting Officer in his Supplemental Report notes that the protestor is correct in his contention that the specifications require use of the OCE shelflist and dictionary catalogue which

are located only at the OCE library." Although it would appear that this statement concedes that the use of Government facilities was required for more than inputting by the specifications, a further Supplemental Report by the Corps dated September 21, 1978, conditioned this statement as follows:

"While the Government agreed [in its Supplemental Report of August 29] that the use of the information contained in the library catalogue and shelflist were required in the cataloguing and classification work to be performed under this contract, this information is readily obtainable from the reports themselves, which, in accordance with Amendment 4, were to be transported to the contractor's facilities in weekly batches of 75 reports. With respect to performing the research required to assure that existing call numbers are not being reutilized, the Government's library staff will perform this work before sending the reports on to the contractor.

Accordingly, it is the Government's position that no catalogue work was intended to be performed at the Government facilities * * *!"

We agree with Cloyd's contention that the import of part II of the specifications, although not specifically mentioning use of the OCE Library, is that the library would actually have to be used for a significant amount of the classification and cataloguing work because of the stated necessity of verification against the OCE shelflist and catalogue. Additional support for Cloyd's contention is found in the standards promulgated by OCLC into which the specifications required the cataloguing and classification information to be input. These standards dictate that the OCLC terminal, available to the contractor only at the OCE library, be used in conjunction with the cataloguing and classification process. The Corps is able to argue that the contractor need use the library for inputting only because it waives contractor performance of some work required by certain of the specifications and because it expects contractor performance that is not entirely consistent with OCLC standards.

It is quite clear from the Corps' report of September 21 that the contractor's use of the OCLC library for inputting only is intended to be an essential requirement of the IFB. However, we believe either that the specifications were defective in conveying this intent or were, viewed in the most favorable light, reasonably susceptible to more than one interpretation.

It is also clear that since Cloyd's bid was conditioned on doing all the work on Government premises, it was non-negotiable under any reasonable interpretation of the specifications. Even granting that the OCLC library would have to be used for more than inputting, there is a significant amount of work that could be done at the contractor's facilities, which Cloyd refused to do under his bid.

Accordingly, Cloyd's bid was properly rejected. However, we are by separate letter of today advising the Corps that the specifications used in this procurement were at least unclear that any future procurements involving processing books into the OCLC system should clearly indicate the operations to be performed by the contractor at its own facilities as well as the conditions for use of the affected library; and that the Corps should determine whether there was financial prejudice to the Government as a result of the defective specification and take any action as may be appropriate in the circumstances, such as contract price modification.

Cloyd also asks a question relating to our bid protest procedures. 4 C.F.R. 20 (1978). It asks whether "present contract performance [by the second low bidder] constitute[s] 'adverse agency action,' because it is 'contracting agency acquiescence in and active support of continued and substantial contract performance'?" (Sec. 20.0(b))" The only function of the term "adverse agency action" in our procedures is to establish a point from which timeliness of bid protests are measured. Since timeliness is not involved in this protest, the question involving "adverse agency action" is irrelevant and need not be answered.

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Protest denied.

R. J. Kettner
Deputy Comptroller General
of the United States