



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Thorner Press, Inc.

File: B-283500

Date: December 2, 1999

Anthony W. Hawks, Esq., for the protester.
Thomas Kelly, Esq., Government Printing Office, 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

Bid cannot be corrected where price schedule contained a handwritten notation that materially lowered the quantity covered by the unit price and thus price bid was for significantly lower quantity than called for by invitation for bids.

DECISION

Thorner Press, Inc. protests the rejection of its apparent low bid as nonresponsive under invitation for bids (IFB) No. C887-S, issued by the Government Printing Office (GPO) for production of the Recovery Times Newsletter for the Federal Emergency Management Agency (FEMA).

We deny the protest.

Bidders were required to submit unit prices for various line items of work associated with printing, binding, packing, storage and distribution of estimated quantities of the newsletters, which are published by FEMA to provide citizens with information and directions on where to get help in the event of an emergency or natural disaster. Among the work requirements listed as "Additional Operations" is "gathering." IFB at 12 (line item III(b)). Under this requirement, the contractor must gather for mailing multiple newsletters in varying sets of 2 to 12 or more for approximately 500 to 50,000 potential disaster relief applicants. IFB at 6.

In the Schedule of Prices section (pages 11 and 12 of the IFB), bidders were to insert unit prices for required line items. The Determination of Award section (page 10 of the IFB) contained the estimated quantity for each line item. The solicitation advised that the low bidder would be determined by multiplying the unit prices by

the estimated quantities listed in the IFB, and adding these figures to determine a total bid price. IFB at 10.

As initially issued, the IFB stated that the unit for purposes of pricing “gathering” was the order; that is, item III(b) of page 12 listed “per order” before the blank for the bidder’s price for that line item. The IFB initially listed 20 as the estimated quantity for gathering; in combination with page 12’s definition of the relevant pricing unit, this meant that, as initially issued, the IFB estimated that there would be 20 orders of gathering and requested a per-order price.

Amendment No. 1 made various changes to the solicitation. As relevant to this protest, bidders were instructed as follows:

on page 10, under SECTION 4. - SCHEDULE OF PRICES delete the figure in line item III. (b) 20 and change it to III. (b) 1,000 [and] on page 12, under III. ADDITIONAL OPERATIONS, under line item III. (b), delete ‘per order’ and **insert ‘per 1,000 newsletters.’**

Agency Report, exh. 3, IFB amend. 1.

The agency subsequently issued a second amendment that stated, in relevant part:

on page 10, under SECTION 4. - SCHEDULE OF PRICES delete the figure in line item III. (b) 1,000 and change it to III. (b) 100.

Note: Figure in line item III. (b) previously was changed from 20 to 1,000 by Amendment No. 1. . . . REMAINDER OF SPECIFICATIONS SAME.

Agency Report, exh. 4, IFB amend. 2.¹

The effect of the two amendments was to change the pricing unit for gathering to “per 1,000 newsletters” and to change the estimated quantity for gathering to 100 units. At 1,000 newsletters per pricing unit, that meant that the agency anticipated gathering 100,000 newsletters (100 times 1,000 newsletters).

Two bids were received by the July 29, 1999, amended bid opening date. Thorner was the low bidder with a total price of \$732,242.50; McDonald & Eudy Printers, Inc. offered \$927,684. Thorner submitted the standard GPO Form 910 on which the firm acknowledged all amendments and a price schedule (pages 11-13 of the IFB). Agency Report, exh. 6, Bid of Thorner Press. The next day, the agency received a

¹In both amendments, the reference to section 4 (“Schedule of Prices”) was erroneous; the page 10 provision referred to was actually the quantity estimate in section 3 (“Determination of Award”).

facsimile from Thorner in which the firm acknowledged its “complete understanding of referenced Program specifications” and confirmed its pricing as submitted. Agency Report, exh. 8.

Upon review of Thorner’s bid, the contracting officer noted that under line item III(b) on page 12 of the price schedule, for which Thorner bid \$125.00, the firm had crossed out the word “order” in the phrase “per order” and inserted the following: “100 Amend. #2.” The contracting officer concluded that the protester’s insertion of the words “100 Amend. #2” altered the requirement set forth in amendment No. 1 for pricing the gathering of newsletters by quantities of 1,000. In fact, as explained above, the agency had intended amendment No. 2 to change the solicitation quantity estimates for line item III(b) on page 10, not the size of the unit being priced on page 12. Because of the protester’s handwritten notation changing the unit, for pricing purposes, from 1,000 to 100, the agency rejected Thorner’s bid as nonresponsive and awarded the contract to McDonald & Eudy Printers. Agency Report, exh. 10, Memorandum from Chief, Term Contracts Section C, to Contract Review Board (Aug. 2, 1999). Following the denial of an agency-level protest, Thorner filed the instant protest in our Office.

Initially, Thorner protested that the solicitation, as twice amended, was ambiguous and the agency therefore was required to cancel the IFB and resolicit its needs. In its comments on the agency’s report, the protester has withdrawn this protest ground because it concedes that this protest ground challenged a patent ambiguity in the IFB and was therefore untimely raised after award. Protester’s Comments at 1. However, although the matter was untimely raised, we would be remiss in not acknowledging that both amendments were confusing in referencing the “Schedule of Prices” section when the agency intended the “Determination of Award” provision. Nonetheless, we must decide the case on the basis of the amended solicitation.

As an alternative to its untimely challenge to the ambiguity in the solicitation, the protester contends that the agency impermissibly rejected its bid as nonresponsive on the “mistaken belief by the Contracting Officer that Thorner Press had attempted to change Amendment No. 2 by altering a specification on ‘Page 12 of 13’ of the solicitation from a stated requirement that the ‘ADDITIONAL OPERATION’ of ‘Gathering’ was to be performed in packages of ‘per 1,000 newsletters’ to a modified requirement of packages ‘per 100 newsletters.’” Protester’s Comments at 2. The protester asserts that its handwritten notation on line item III(b) of the price schedule was an apparent mistake and the agency should have utilized the procedures governing mistake in bids rather than determine its bid was nonresponsive.² Protest at 4.

²Although it has no impact here, we note that GPO, as a legislative branch agency, is not subject to the Federal Acquisition Regulation (FAR), but instead follows its own Printing Procurement Regulations in conducting its procurements.

To support its mistake claim, Thorner submitted an affidavit from its estimator in which she states that “[t]o ensure the responsiveness” of the bid, she acknowledged amendment No. 2 “both on the first page of the [bid] and on ‘Page 12 of 13’ of the Solicitation.” Protester’s Comments, exh. 1, Affidavit of Christine A. Nardello, Oct. 5, 1999, ¶ 4, at 1. The estimator further attests as follows:

In acknowledging Amendment No. 2 on ‘Page 12 of 13’, I crossed-out the word ‘order’ and substituted the phrase ‘100 Amend #2’ because I understood Amendment #2 to require that the ‘ADDITIONAL OPERATION’ of ‘Gathering’ was to be performed in packages of ‘per 100 newsletters’ rather than the ‘per 1000 newsletters’ packages previously required under Amendment No. 1.

Id. ¶ 5, at 2.

The authority to permit correction of mistakes in bids may not be used to make nonresponsive bids responsive by post-bid opening explanation or correction. See DeLancey Printing, B-277698, Nov. 12, 1997, 97-2 CPD ¶ 139 at 2; Trio Graphics, Inc., B-253471, Aug. 27, 1993, 93-2 CPD ¶ 139 at 2-4. The record shows that, while Thorner acknowledged both amendments, its \$125.00 bid for line item III(b) did not price gathering per 1,000 newsletters, the quantity specified as the unit for pricing purposes. Instead, based on the handwritten alteration, Thorner’s bid covered gathering per 100 newsletters. Because it altered the size of the unit being priced, Thorner’s bid was properly found nonresponsive.

Even if, as Thorner contends, the agency should have given the firm an opportunity to request correction of the alleged mistake, there would be no basis to grant a correction request here, since there is no clarity about Thorner’s intended bid price (or, more precisely, the intended size of the unit being priced). Indeed, even when arguing that its bid contained an error, Thorner has not clearly stated what its intended bid was. In its submissions to our Office, Thorner has argued both that it intended for its \$125.00 price for line item III(b) to cover the gathering of 100 newsletters (which appears to be the position taken in the above quotation from the estimator) and for that same \$125.00 price to cover the gathering of 1,000 newsletters (which appears to be the position taken on page 2 of Thorner’s comments). Without an unambiguous claim from the firm about what its intended bid was (much less evidence supporting the claim), there would be no possible basis to grant a bid correction request. What the protester is seeking is simply not a correction as contemplated under the mistake procedures. Printing Procurement Regulation, GPO Publication 305.3 (Rev. 5-99), Chap. XII, section 6(3)(a), (b); see Modern Microfilm Methods, Inc., B-219677, Aug. 29, 1985, 85-2 CPD ¶ 250 at 1.

The protest is denied.

Comptroller General
of the United States