



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

B-178375

June 26, 1973

3/1/26

Mr. Copy, Inc.
1926 Eye Street, N. W.
Washington, D. C. 20006

Attention: Mr. Joseph V. Waluga
President

Gentlemen:

Reference is made to your letter and telegram dated April 3 and 9, 1973, respectively, protesting the award of any contract under invitation for bids (IFB) No. 73-26, issued by the Procurement Division, Federal Communications Commission, (FCC), Washington, D.C.

The IFB solicited prices that would be charged the public for providing research and duplication services with respect to public documents maintained by the FCC that are available under the Freedom of Information Act. The basis for evaluation of the requirements contract to be awarded was specified in the IFB as follows:

5. Method of Award. This contract shall be awarded in the aggregate to the lowest responsive, responsible bidder for the items as shown in the bid schedule. The lowest bidder shall be determined by multiplying the estimated quantities by the unit prices inserted by the bidder thereby determining the lowest overall cost to the public for the services to be provided.

The bid schedule consisted of sections I (Research Services) and II (Duplication Services). There was one line item in section I. Section II was divided into parts A through G. A subtotal was required after parts E and F. The subtotal in your bid after part E included the extended price for section I. In the evaluation of bids, the subtotal after part F apparently was overlooked and your

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total bid was determined to be \$63,043.75 on the basis of the addition of the subtotal after part E and the extended price for part G. On the basis of such evaluation, you were determined to be the second low bidder of the six that bid.

After a preaward survey on the low bidder produced a negative result, a survey was made of your facilities. You were found to be a responsible bidder by the survey team. However, during the survey, the team discovered that your bid had been evaluated incorrectly and that the correct total was \$99,093.75. On that basis you were the third low bidder and the bidder that previously ranked third became the second low bidder. That bidder subsequently was surveyed and an award was made to it upon a determination that it was a responsible bidder. By letter dated March 28, 1973, the contracting officer advised you of the award that was made.

In your letter of April 3, 1973, you stated four reasons why you believe the procurement should have been readvertised. Your contentions will be considered in order.

First you stated that the previous contractor did not give the Government "proper feedback." You have indicated that discussions with the preaward survey team lead you to believe that there will be greater use of contractor supplied coin-operated machines than estimated in the IFB. The FCC report to our Office, a copy of which was furnished to you, stated that the feedback furnished by the prior contractor is believed to be correct. Further, the report has acknowledged that members of the survey team did discuss the possibility that you might be able to expand on the use of the coin machines by the performance of outstanding services and that the discussion was meant to illustrate the possible potential of the contract. The surveyors would not have any way of knowing precisely the quantities that would be generated under the contract since that would depend upon the requirements of the public.

The estimate that was included in the IFB was based upon reports made by the prior contractor. Federal Procurement Regulations 1-3.409(b) provide that the estimate in a requirements contract may be obtained from the records of previous requirements. Concerning the use of estimates in requirements contracts, in B-171569 (2), March 24, 1971, we stated:

The responsibility for ascertaining the Government's minimum needs rests primarily with the contracting agency concerned, and our Office will not question the determination of the agency in this regard in the absence of evidence of bad faith or lack of a substantial basis for the determination. Where a requirements type of contract is contemplated by an agency, the courts and our Office have held that such contracts are valid provided that the estimate of the probable amount of goods or services to be generated was determined in good faith. See 47 Comp. Gen. 365 (1968) and 37 id. 688 (1958) and court cases therein cited. See, also, Shader Contractors, Inc. v. United States, 149 Ct. Cl. 539 (1960).

As indicated above, the requirement was based upon the previous contractor's reports which the FCC believed to be correct. There is nothing in the record to indicate that the estimates were included in the IFB in bad faith. Further, directly below the quantities in the bid schedule it was stated:

Estimated Quantities - The quantities reflected in this schedule are for evaluation purposes only and are not to be construed as actual requirements.

From the foregoing, we conclude that the estimates were included in good faith and that the terms of the competition were clearly stated. Therefore, we find no basis to question the award on the basis of your first contention.

Your second point is that the bid form was set up in a confusing manner with the result that both you and the FCC committed embarrassing mistakes and consequently influenced your supplemental proposal in a different perspective than if no mistake had been made. Although the proposal you made after the preaward survey to reduce the price on copies made on the coin-operated machines from \$.15 to \$.10 a copy on certain conditions if you were the successful bidder would have been proper for consideration if that event had materialized, we do not consider the oversight made by the FCC in the original bid evaluation noted above or the mistaken reliance you placed upon the evaluation factor provided in the IFB for the evaluation of copies made on the coin-operated machines as constituting a basis for a readvertisement, since the method of evaluation and the limitations upon the quantities stated in the IFB were precise and could not properly have been considered to have contributed to the respective errors.

Your third point is that the IFB did not divulge that there would be a need for large runs of oversized documents. However, contrary to your contention, the FCC has indicated that the number of copies of oversized documents was estimated to be negligible and therefore was excluded from the evaluated items and was by IFB amendment 1 left to negotiation between the contractor and the ordering customer in each case.

Your final reason for suggesting readvertisement is that during the preaward survey you were advised that a decision to make an award would be made by March 15, 1973, and that as of March 28, 1973, you had received no information as to whom the award had been made. FCC has advised that the award was made on March 26, 1973, and that a notice of award was mailed to you on March 28, 1973. Since the IFB provided 60 days for acceptance of the bid by the Government and there was no representation in the IFB that the award would be made by March 15 and the award was in fact made well within the 60 day period provided, the failure to make an award by March 15 is not a defect in the IFB that would require readvertisement. In fact, FPR 1-2.404-1(c) provides:

Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for readvertisement.

In view of the foregoing, the protest is denied.

Sincerely yours,

Acting
PAUL G. DEMBLING
Comptroller General
of the United States