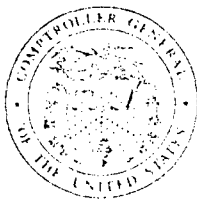


DECISION



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

51028

FILE: B-184035

DATE: September 22, 1975

MATTER OF: Johnson's Auto Parts

97438

DIGEST:

Bidder who did not acknowledge amendment containing, among other things, requirement that contractor bear risks and claims under contract for which contracting activity would otherwise be liable, properly had its bid rejected as nonresponsive. Failure to acknowledge amendment resulted in offer by bidder which was subject to less onerous and possibly less financially-demanding requirements than those imposed on other bidders and was thus not for acceptance.

Invitation for bids No. 0882-AA-23-0-5-RB, issued by the Government of the District of Columbia, requested bids on two items: removal of abandoned vehicles and removal of junk vehicles. One page of the invitation contained blanks for the insertion of a unit price for each item and for the extended price for each item (the unit price times the estimated quantity of vehicles needing to be removed). After issuance of the invitation, an amendment was issued changing various aspects of the procurement. Four bids were received by the May 22, 1975, opening date.

Only award on item 2 is at issue. It is the position of the contracting activity that the bid of Johnson's Auto Parts (Johnson) may not be accepted for this item. First, Johnson did not insert any prices on the pricing page of the invitation. Instead it inserted "\$9.90 per car" on the first page of the invitation with no indication as to whether this price was intended for both items or only one. The contracting activity believes this manner of pricing is ambiguous. Secondly, Johnson did not acknowledge the amendment to the invitation. This amendment deleted the requirement for a bid guarantee deposit and a performance bond, reduced the public liability coverage the contractor would have to carry, clarified the intent of the quantities cited in the schedule, extended the bid opening date, and clarified what would constitute an acceptable late bid. It added a contractor's responsibility clause with respect to the safety of his employees and required

him to save and hold harmless the District against any and all loss, cost, damage, claims, expenses, or liability in connection with the performance of the contract. It added the requirement that the contractor shall be fully covered by Workmen's Compensation Insurance and shall carry adequate liability and property damage insurance. It permitted the District the right to inspect and audit the accounts and methods of internal control of the contractor and to make any other inspections and audits deemed necessary to insure compliance with the contract. Finally, the amendment added an indemnity clause obligating the contractor to assume all risks incidental to the work to be performed and to save harmless and indemnify the District from any and all claims, delays, suits, costs, charges, damages, counsel fees, judgments and decrees to which the District might be subjected on account of any injuries to persons or damage to properties or premises that occur as a result of any act or omission of the contractor or his agents, servants or employees in the prosecution of the work under the contract.

As to the method of pricing used, counsel for Johnson notes that the District should have known that the price was for junk vehicles as Johnson has never bid on abandoned vehicles before, but has always bid on junk vehicles, and its last contract with the District was for junk vehicles. It is the contention of counsel for Johnson that failure to acknowledge the amendment should have no effect and that award should be made to Johnson. As regards the amendment, it is noted that the work to be performed under the contract is not varied in any way thereby. The remaining changes are also not felt to materially affect any awarded contract inasmuch as they merely expound upon a number of items which the bidder would no doubt be required to meet in any event.

We are of the opinion that the Johnson bid was properly rejected. Although a material deviation in bid ordinarily is considered to be an irregularity having more than a trivial or negligible effect on price, quantity, quality, or delivery, an irregularity in a bid resulting in benefits to a bidder not extended to all bidders is a variance rendering the bid nonresponsive. 39 Comp. Gen. 259 (1959); 50 Comp. Gen. 11 (1970); B-171424, March 1, 1971. In the present case, all bidders acknowledging the amendment bound themselves to assume the costs of various liabilities with which the District might be beset due to performance under the contract. These costs could possibly be substantial. While Johnson may have planned on assuming

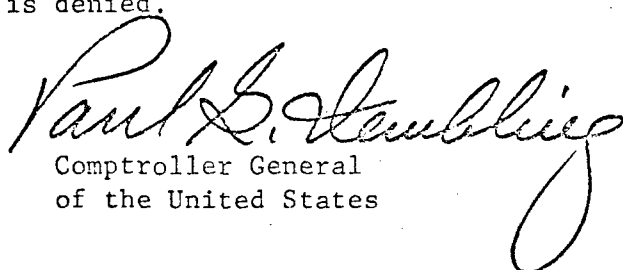
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the same costs and risks, a bidder's intention must be determined from the bid itself. Since Johnson did not acknowledge the amendment, any resultant contract with Johnson would not bind it to assume the risks agreed to by those bidders acknowledging the amendment and acceptance of the Johnson bid would therefore be prejudicial to them.

Inasmuch as we believe the failure to acknowledge the amendment rendered Johnson's bid nonresponsive, we see no reason to address the issue of the manner in which Johnson priced its bid.

Accordingly, the protest is denied.

For the


Comptroller General
of the United States