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DECISION



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

FILE: B-200871

DATE: October 5, 1981

MATTER OF: KenCom, Inc.

DIGEST:

1. IFB which described electrical wiring work to be done by reference to "approximate locations" was sufficiently detailed to permit competitive bidding since work details could be estimated through visiting worksite.
2. Work described in notes on IFB drawing was not inconsistent with IFB's specifications since notes' work was incorporated by reference into specifications both by provision of specifications as well as general provision No. 2 of IFB. Moreover, even if notes' work is not to be considered to be part of specifications, bidders were still required to price notes' work in their bids because IFB repeatedly stated that work to be bid was set forth in both "specifications and drawings." Repeated statements admitted possibility that some required work might be found only in IFB's specifications or in drawings.
3. Bidder assumed risk of allegedly bidding on cost estimate which obviously did not include all work required under reasonable interpretation of specifications and drawings since bidder did not question cost estimate prior to bidding; moreover, under applicable precedent bidder is expected to prepare its independent bid regardless of cost estimate which is not ceiling for bidding.

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4. Agency must reject bid, responsive on its face, where, despite bidder's denial, it is apparent to agency that a mistake has been made.
5. The Federal Procurement Regulations do not require pre-bid-opening determinations of available funding in procurements having additive items; therefore, Veterans Administration has discretion in determining amount of available funding for award of contract where additional funds are obtained after bid opening.

KenCom, Inc. (KenCom), protests the rejection of its low bid under invitation for bids (IFB) No. 530-46-80 issued by the Veterans Administration Medical Center (VA), Brentwood, California, for electrical work. VA rejected the bid as nonresponsive because KenCom admitted that it did not bid all the work which VA maintains was required by the IFB's specifications and drawings. KenCom asserts that it sought clarification of an alleged deficiency in a work description contained in drawing E-1 of the IFB prior to bid opening and that when it did not receive a clarification, KenCom did not bid the work.

We find the IFB's statement of the VA's requirement in the drawing to have been adequate; therefore, under the circumstances, we conclude that KenCom's bid was properly rejected.

VA's IFB described two distinct kinds of electrical work. The first kind of work (generator work) amounted to furnishing and installing emergency generators outside seven buildings and then running wires connecting the generators to existing electrical systems in each of the buildings. The second kind of work (wiring work) consisted of installing an emergency wiring system inside each building separate and apart from the existing electrical system. The current dispute centers on whether IFB drawing E-1 properly indicated that the wiring work was a part of the work to be bid.

Initially, VA planned only the acquisition of the generator work, which had an estimated price range of between \$100,000 and \$150,000. An outside architect/engineer was engaged to prepare the generator work specifications and drawings. VA then decided to add the wiring work to the solicitation. The architect/engineer was given 1 week in which to modify the specifications and drawings to include the additional work. The new work was added, in the form of notes, to drawing E-1. The addition of the wiring work increased the project's estimated price range by approximately \$100,000; however, the estimated price range was not altered to show the increase in the project's magnitude.

The IFB was issued on August 15, 1980, with a September 17, 1980, bid opening date. The bid package contained specifications and was accompanied by nine drawings.

On September 11, 1980, VA received a telegram from KenCom which raised the issue of whether the wiring work set out in drawing E-1 was included in the work to be bid. Note 3 of this drawing described the work, as follows:

"Furnish and install all required branch circuit conduit, wire, boxes, etc. to supply all of the lights, switches, receptacles and power for each of the seven buildings from the new emergency panels. Refer to electrical plan for each of the buildings for the schedule of emergency power requirements. The approximate location of the rooms or space where the electrical load is located is indicated on the floor plans. The electrical contractor is responsible for circuiting the emergency loads and routing for conduits. He shall submit a print of each floor plan indicating his proposed circuiting and routing thru the building to the resident engineer for his approval prior to commencing his work."

(Further details of this wiring work were set forth in notes 4-9 of this drawing.)

KenCom's telegram stated that the wiring work was "not estimatable considering the information provided." This was interpreted by KenCom to mean that the wiring work would be negotiated with the successful bidder after award of the generator work.

VA's contracting officer states that "many" phone calls were then "placed to KenCom." As stated by the contracting officer:

"I phoned and reached an answering service. I had two phone numbers; the second was for the actual company which referred me back to the answering service. Company was called 9/11, 9/12, 9/13 and 9/14 and no one answered my call."

In reply, KenCom states it "has no record of phone calls."

At bid opening, the following bids were received:

KenCom	\$185,000
Emerald Electric, Inc.	283,623
John P. Ingram, Jr. & Associates	284,876

Because KenCom's bid was substantially lower than the other bids received, the contracting officer requested a confirmation of KenCom's price. At the "confirmation" meeting with VA, KenCom stated it had not included the wiring work described in drawing E-1. Following this meeting, VA declared KenCom's bid nonresponsive, thereby giving rise to the present protest.

It is well established that solicitations must adequately describe the work to be bid so as to permit the preparation and evaluation of bids on a common basis. Federal Contracting Corporation, B-183342, June 30, 1975, 75-1 CPD 398. Keeping this general consideration in mind, we now examine relevant portions of the subject IFB.

The IFB called for the performance of "all work * * * in strict accordance with the General Provisions * * * specifications, schedules, drawings, and conditions * * *." The IFB further stated that the nine drawings accompanying the specifications were to be part of the contract and that bids were to be submitted "per specifications and drawings." The general requirements of the IFB required performance of the work "as required by specifications and/or drawings"; moreover, the summary of work section of the specifications stated that the "[w]ork to be performed is listed in detail on drawings and in specifications."

KenCom alleges (1) that it concluded the wiring work called for in these notes was not reasonably a part of the work to be bid--principally because the requirement described there is allegedly insufficiently described--and (2) that the estimated price range set forth in the IFB did not include the questioned work.

Wiring Work Description

As noted above, the IFB specifically stated bids were to be submitted "per specifications and drawings"; this statement was also repeated in the summary of work section of the IFB's specifications. Moreover, the wording of the notes of drawing E-1 reasonably conveyed the wiring work requirement described, in our view, notwithstanding that the generator work was described in more detail in the IFB. Specifically, we have held that agencies need not pinpoint wiring locations on plans when bidders can ascertain the locations by visiting the site; that agencies are not always able to draft precise specifications; and that it is not reasonable for an agency to expend great sums of money to draft specifications which would eliminate the need for bidders to visit the site in order to prepare their bids. Palmer and Sicard, Inc., B-192994, June 22, 1979, 79-1 CPD 449. As we said in the cited case:

"* * * we reject Palmer & Sicard's assertion that a bidder should be able to determine every detail of the 'scope and extent' of work to be performed from the IFB documents alone. While it would have been

preferable for the IFB drawings to have indicated the location of the panel boards and diagram the power wiring to be removed, the failure of the IFB to do so did not render the IFB defective. * * *

We think it is significant that the two other bidders were apparently able to properly estimate the work for bidding purposes through site visits, notwithstanding that final approval of the precise plan for routing the wiring would not be granted until after award of the contract. As stated by a representative of Emerald Electric:

"After personally walking the job site prior to bid date, in approximately 2 1/2 hours, and finding the work to be repetitive and nothing difficult I returned to my office and relayed my findings to our estimator who proceeded to take off the plans. He did not have a problem to interpret same as is evident by our legitimate competitor J.P. Ingram whose bid was only a few hundred dollars above ours. From previous bid results J.P. Ingram has completed numerous projects at the same job site.

"In the bid instructions it was quite evident that the contractor was to include, in his cost, to supply a wiring layout for the Emergency Branch Circuiting. This does not require major engineering, as * * * stated by Kencom * * *, and is a day-to-day task of any Electrical Contractor."

Further, we reject the following additional arguments of KenCom concerning interpretation of the "wiring work" requirement.

(1) The reference to the "electrical contractor" in these notes means an entity other than the contractor under the subject IFB.

GAO comment: Since bidders were directed to bid on the work described in the drawings, KenCom should have understood that the work described in these notes was to be awarded under the subject IFB.

(2) There is a conflict between note 3 and the specifications.

GAO comment: As noted above, the specifications section of the IFB stated specifically that the work to be performed was also "listed in detail on the drawings." Because of this statement, it reasonably appears that this comment in the specifications section incorporated all work set forth in the drawings. In any event, even if the specifications are held to contain no reference to the work in these notes, this circumstance would not create a "conflict" between the drawings and the specifications. Since bidders were directed to bid on work set forth in both the specifications and the drawings, this directive admits the possibility, in our view, that some work might be found only in the specifications or only in the drawings. Further, general provision No. 2 of the IFB specifically provided that anything "shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both." Hence, the work described in the notes is also incorporated into the specifications under this provision.

Estimated Price Range

Although the estimated price range was erroneous here, we have held that the estimated price range does not establish an inflexible ceiling and that the responsibility is still on the bidder to compute its own independent bid regardless of the estimate. See Scott Glass, Inc.--Reconsideration, B-185864, August 17, 1976, 76-2 CPD 164. Further, the record shows, as noted above, that KenCom made no inquiry before bid opening as to the validity of the cost estimate; rather, KenCom merely questioned the sufficiency of the work statement in drawing E-1. Since the work statement in question was reasonably clear, the fact that VA was unable to contact KenCom prior to bid opening in response to the inquiry did not prejudice the company. See Kleen-Rite Corporation, B-189458, September 28, 1977, 77-2 CPD 237.

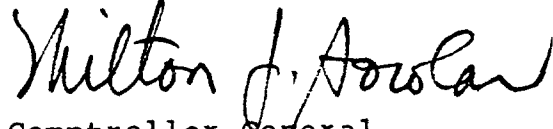
Moreover, we think KenCom's inquiry implicitly showed that the company recognized the possibility that its prebid interpretation of drawing E-1 might have been erroneous--otherwise it would not have

transmitted the inquiry. And KenCom admits that the cost estimate was only "reasonably in concurrence" with the company's erroneous interpretation of the work requirements. In these circumstances, we must conclude that KenCom assumed the risk of allegedly bidding on a cost estimate which obviously did not include all the work reasonably required under the specifications and drawings.

KenCom's prebid inquiry clearly shows that its bid was based on a mistaken interpretation of the extent of work required under the IFB. Also, its bid, which was approximately 40 percent less than the other bids received, tends to confirm this mistake. In these circumstances, and even assuming that KenCom's bid, on its face, was responsive to the work requirements, it is our view that the bid is to be rejected even though KenCom has not claimed a bid mistake. See Panoramic Studios, B-200664, August 17, 1981, 81-2 CPD 144. Consequently, we conclude that KenCom's bid was properly rejected.

Finally, KenCom argues that it would be improper for VA to issue a contract to the next low bidder in an amount which is admittedly in excess of the funds the VA had available at the time of bid opening. In support of its contention, KenCom cites our decision, Martin J. Simko Construction, Inc., B-200996, B-200997, March 18, 1981, 81-1 CPD 209, involving Defense Acquisition Regulation § 2-201(b)(xli) (Defense Acquisition Circular No. 76-17, September 1, 1978). In our decision, we noted that the cited regulation requires a contracting officer, prior to bid opening, to determine and record the available funding in a procurement having additive or deductive items, as here, generally for the purpose of determining the low bidder. Unlike the above military regulation, however, the Federal Procurement Regulations governing this procurement have no similar provision. Consequently, the Simko case is inapplicable and the funding available for this procurement is within the discretion of the VA. See H. M. Byars Construction Company, 54 Comp. Gen. 320 (1974), 74-2 CPD 233.

The protest is denied.

A handwritten signature in cursive script that reads "Milton J. Rowland".

Acting Comptroller General
of the United States