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DECISION



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

FILE: B-203871

DATE: November 2, 1981

MATTER OF: Polycast Technology Corporation

DIGEST:

1. Bid containing prompt-payment discount statement "NET% 30 calendar days + 2%" does not impose an open-ended interest charge. GAO concludes that, at worst, after 30 calendar days, the bidder reserved the right to increase the bid price by 2 percent. Thus, the bid price is certain and the bid can be evaluated without prejudice to other bidders.
2. Ambiguous low bid may be accepted because (1) the ambiguity in the bid does not affect the evaluation, (2) the bid is low under either interpretation of the ambiguity, and (3) the low bidder agrees to accept the interpretation which is most favorable to the Government.

Polycast Technology Corporation (Polycast) protests any award to Swedlow, Inc. (Swedlow), under invitation for bids (IFB) No. DLA400-81-B-3990 issued by the Defense Logistics Agency (DLA) for a quantity of plastic sheets for various Government locations.

Polycast contends that Swedlow's low bid should be rejected as nonresponsive because in block 16 of the IFB, "Discount for Prompt Payment," Swedlow's bid read "NET% 30 calendar days + 2%." Polycast states that Swedlow qualified its bid by imposing a condition in its bid. Polycast believes that, instead of offering a discount for prompt payment, Swedlow is attempting to commit the Government to the payment of an open-ended interest charge.

In response, the contracting officer contends that Swedlow has not taken a material exception to the terms of the IFB. DLA interprets the 2-percent charge by Swedlow as a one-time charge

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applicable to payments made by the Government after 30 days, regardless of whether 2 months, 4 months or 2 years has elapsed from the date the payment becomes due. Therefore, DLA concludes that the plus-2-percent-after-30-days' charge is not an open-ended interest charge.

We agree with DLA. Consequently, our cases precluding the Government from paying such an interest charge, cited by Polycast, are inapplicable.

Contrary to DLA's 2-percent increase interpretation, Swedlow contends that its intent was to offer a net price no matter when payment was made. Swedlow explains that it began to bid on the basis interpreted by DLA, which is the way it bids on commercial projects, but did not complete its usual notation following the "+2%" by adding "after 30 calendar days." Thus, Swedlow states it intended its bid to be on a net basis with no increase after 30 days.

While DLA's interpretation seems to be the more reasonable one, Swedlow's explanation of its intended price after 30 calendar days makes Swedlow's bid subject to two interpretations and, thus, its bid is ambiguous. However, the ambiguity does not present a basis to reject Swedlow's bid.

Under the terms and conditions of the IFB, prompt-payment discounts were to be considered in the evaluation of bids provided the minimum payment period for discounts is 20 days. In theory, payment will be made within 20 days from the submission of a proper invoice. For that reason, any discount offered by a bidder for payment made within 20 days was to be deducted from the bid price in evaluation. Since Swedlow's net price is good for 30 days, we believe that Swedlow's bid must be evaluated at the net price. By evaluating Swedlow's bid at the net price, on the basis that payment will be made within 30 days, other bidders are not prejudiced because the other bids were evaluated on the basis that payment will be made within 20 days. Further, Swedlow is low under either DLA's or Swedlow's interpretation of its bid.

Accordingly, Swedlow's bid may be accepted because (1) the ambiguity does not affect the evaluation of the bid, (2) the bid is the low bid under either interpretation of the ambiguity, and (3) the low bidder agrees to accept the interpretation which is most favorable to the Government. See B-148648, April 19, 1962.

Protest denied.

for Milton J. Fowler
Comptroller General
of the United States