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DECISION



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

FILE: B-212505.2

DATE: October 25, 1983

MATTER OF: American Bank Note Company

DIGEST:

1. When protester believes bidders should be required to specify which of three possible alternatives included in amended solicitation they intend to provide, and that certain costs to user agency should be evaluated, protest must be filed before amended bid opening date to be considered timely, since alleged defects are apparent on face of amended solicitation.
2. When invitation for bids does not require bidders to specify which of three alternative configurations they are offering, procuring agency properly may consider bidder offering any of them to be responsive.
3. Procuring agency may not give greater credit to one of three alternatives specified in solicitation than to the others in the absence of a specific evaluation provision to that effect. Basis for evaluation must be stated clearly and exactly, so that bidders know, before opening, how their bids will be evaluated.
4. When Buy American restriction in proposed legislation is not enacted, protest based on effect of restriction on bid prices becomes academic, and GAO will not consider it further.

The American Bank Note Company protests the Government Printing Office's (GPO) award of a contract for production of new social security cards under a solicitation for program No. B381-S. In accord with the Social Security Amendments

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of 1983, Pub. L. No. 98-21, § 345, 97 Stat. 137 (1983), such cards must be printed on bank note paper. GPO awarded a contract to United States Banknote Corporation on September 27, 1983.

In a protest filed shortly after the bid opening date, August 26, 1983, American Bank Note argues that it learned at opening that GPO did not intend to require bidders to specify which of three alternative configurations they were offering and did not intend to give evaluation credit to bidders offering the one that, according to American Bank Note, will be least expensive for the Social Security Administration to process. Such procedures are unfair, the protester contends, and GPO should resolicit, possibly using negotiated procedures. We summarily deny this protest.

The record indicates that GPO initially specified a document measuring 9-7/8 inches by 3-2/3 inches, printed on a "continuous form." By amendment, however, GPO provided for two alternatives, one increasing the width of the document printed on a continuous form to 4 inches and the other permitting either 3-2/3 or 4-inch documents to be printed and then affixed to a "carrier document" so that the cards can be run through a high-speed computer printer. The solicitation did not state a preference for any production method.

American Bank Note argues that it is more expensive for bidders to print the cards on a continuous form, but less expensive for the Social Security Administration to process such cards.

The protester contends that before submitting its bid, it discussed the requirement with a GPO official, who advised it to specify in its bid which configuration it was offering. From this conversation, American Bank Note states, it inferred that GPO would consider both configuration and processing costs before making an award. American Bank Note also assumed that the Social Security Administration would prefer 3-2/3 inch cards printed on a continuous form because this is the type and size it currently is using, and in the past it has rejected suggestions that it use cards affixed to a carrier document.

American Bank Note therefore bid \$37.41 per 1,000, stating in its bid that it would provide the smaller cards on continuous forms, while United States Banknote bid \$34.90 per 1,000 for an unspecified configuration. (GPO also received two other bids, one apparently nonresponsive and the other higher than either of those at issue here.)

To the extent that American Bank Note is alleging that the solicitation should have required bidders to specify configuration or should have specified that processing costs would be evaluated, the protest is untimely under our procedures, 4 C.F.R. § 21.2 (1983), which require filing of a protest before the amended opening date when an alleged defect is apparent on the face of an amended solicitation.

On the other hand, if the protester's point is that GPO should have evaluated bids in the manner it suggests, without regard to what the solicitation provided, that protest is without legal merit. In an advertised procurement, award must be made to that responsible bidder whose bid, "conforming to the invitation," will be most advantageous to the government, price and other factors considered. Federal Procurement Regulations § 1-2.407-1 (amend. 139, January 1975). In this case, since the solicitation did not actually require bidders to specify the type or size of card they were offering, GPO properly considered bidders offering any one of the three listed alternatives to be responsive, i.e., as offering a product "conforming to the invitation" in all material respects. It appears that United States Banknote met this criterion.

American Bank Note's reliance on oral advice from a GPO official was, of course, at its own risk. Erroneous advice from agency officials cannot estop an agency from rejecting a nonresponsive bid, International Waste Industries, B-210500.2, June 13, 1983, 83-1 CPD 652, or for that matter from accepting a responsive one.

Nor could GPO properly have given greater evaluation credit for a continuous form than for a carrier-type document in the absence of a specific evaluation provision to that effect, regardless of alleged differences in processing costs of the Social Security Administration. The basis for evaluation must be stated with clarity and exactness, so that bidders know, before opening, those "objectively determinable factors" by which their bids will be

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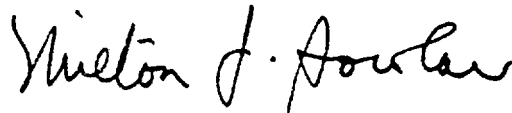
evaluated. See 36 Comp. Gen. 380, 385 (1956); Fairchild Western Systems, Inc., B-211650, September 20, 1983, 83-2 CPD ____.

The protest on this basis is summarily denied.

In a supplementary protest filed September 21, 1983, American Bank Note called attention to proposed legislation requiring that all paper and other materials in the new social security cards to be of domestic origin. The protester believed GPO had obtained a commitment from United States Banknote to comply with this requirement, and argued that if this actually were the case, or if the requirement became law before award, all bidders should be given an opportunity to revise their bids, which had been based on obtaining tinted bank note paper from the United Kingdom. If bidders were required to purchase untinted paper in this country and tint it themselves, American Bank Note contended, it would have a significant effect on bid prices.

Since the filing of the supplementary protest, the matter has become academic. The domestic paper requirement was contained in H.R. 3913, the Department of Health and Human Services (HHS) Appropriation Act as passed by the House. The Senate Committee on Appropriations, however, deleted the restriction before it reported the bill, and under provisions of the joint resolution which appropriated HHS's funds for the fiscal year beginning October 1, 1984, the domestic paper requirement is not effective. See Pub. L. No. 98-107, §§ 101(a)(3) and (4), October 1, 1983. We therefore will not consider the matter further.

The protest is denied.

for 
Comptroller General
of the United States



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

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October 25, 1983

The Honorable Alfonse D'Amato
United States Senate

Dear Senator D'Amato:

We refer to your letter of September 21, 1983 expressing interest in the bid protest of the American Bank Note Company concerning solicitation B-381-S issued by the Government Printing Office.

Enclosed is our decision of today.

Sincerely yours,

for *Milton J. Fowler*
Comptroller General
of the United States

Enclosure