

DECISION



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

FILE: B-213408

DATE: April 10, 1984

MATTER OF: Orvedahl Construction, Inc.

DIGEST:

Bid including dollar limitation on award that bidder would accept was improperly rejected as nonresponsive where the solicitation did not prohibit bidders from including limitations and the limitation did not alter the bidder's obligation to perform in accordance with the terms and conditions of the solicitation.

Orvedahl Construction, Inc. (Orvedahl), protests the rejection as nonresponsive of its low bid submitted in response to the Department of the Air Force (Air Force) invitation for bids (IFB) No. F32605-83-B0072.

The IFB requested bids to remove and replace windows at Grand Forks Air Force Base. The IFB divided the required work into five line items and provided that bidders were not required to bid on each line item. Bids for each line item would be evaluated independently and awards would be made to the low responsive, responsible bidder on each line item or combination of line items.

We sustain the protest.

Orvedahl submitted bids for every line item and was low at \$781,000 on line item No. 3 and \$622,000 on line item No. 5. However, the contracting officer determined that Orvedahl's bid was nonresponsive because the bid included a handwritten notation that Orvedahl would not accept contract awards totaling more than \$1 million. Contracts for these line items were awarded to the second low bidder, Peterson Construction Company, Inc. (Peterson), at a price of \$903,689 for line item No. 3 and \$691,649 for line item No. 5.

Orvedahl alleges that the notation in its bid did not render the bid nonresponsive and that as the low bidder, it should have been awarded a contract for either line item No. 3 or 5. Orvedahl requests that the Air Force terminate its contracts with Peterson and award the contracts to it. In the alternative, Orvedahl requests bid preparation costs.

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The Air Force responds that at the time it rejected Orvedahl's bid, it believed that the limitation Orvedahl placed on the dollar amount of the awards it would accept constituted an improper bid qualification. The Air Force relies on Defense Acquisition Regulation § 2-404.2(d) (1976 ed.) (Defense Acquisition Circular No. 76-17, September 1, 1978), which permits the contracting officer to reject a bid when the bidder has attempted to impose conditions in its bid which would limit its liability to the government. The basis for rejecting such a bid is the prejudice to other bidders which would result from permitting a bidder to impose such conditions. The Air Force asserts that by qualifying its bid by a dollar limitation instead of refraining from bidding on all items, Orvedahl limited its potential liability to the government by restricting the Air Force's ability to make contract awards. The Air Force also alleges that to consider Orvedahl's bid with the restriction would prejudice other bidders because Orvedahl had five separate chances to receive an award and Orvedahl could bid on each item with a higher profit margin.

The Air Force also believes that Orvedahl's bid was nonresponsive because Orvedahl's intent to be bound by the acceptance of its bid was not evident from the face of Orvedahl's bid. The Air Force reached this result by reasoning that Orvedahl's low bids on items Nos. 3 and 5 totaled more than \$1 million and the contracting officer could not tell on which item Orvedahl would be bound.

Finally, the Air Force alleges that the rejection of Orvedahl's bid was in accordance with section 10(c) of the IFB Instructions to Bidders, which states that the government may accept any item or combination of items unless precluded by the IFB or by a restrictive limitation which a bidder includes with its bid.

A bid is responsive if the bid contains the bidder's unequivocal offer to provide the product or service requested in conformance with the material terms and conditions of the IFB and the face of the bid indicates the bidder's intent to be bound upon the government's acceptance of its bid. See The Entwistle Company, B-192990, February 15, 1979, 79-1 CPD 112.

Pursuant to these principles, we have recognized that a bidder may insert, without rendering its bid nonresponsive, certain limitations if the IFB does not prohibit the bidder from doing so. For example, we have concluded that a bidder may state that it will only accept a contract for a few items of work solicited. See Webfoot Reforestation, B-194214, May 25, 1979, 79-1 CPD 378. In that case, we found that the limitation inserted by the bidder did not

affect the government's right to award a contract on the items for which the bidder was eligible and that the qualification did not change the bidder's obligation to perform in accordance with the terms and conditions of the IFB.

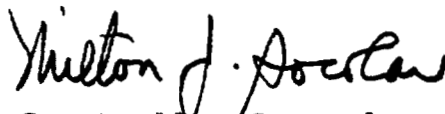
We believe that the reasoning of such cases applies to the present case. Initially, while the IFB stated the bidders need not submit a bid for each line item, the IFB did not specifically prohibit bidders from inserting limitations on the awards they were willing to accept. In this regard, we have found that an IFB which states that the government may accept any item or combination of items unless the bidder includes a restrictive limitation in his bid expressly indicates to bidders that they may include limitations in their bids. George C. Martin, Inc., B-182175, July 1, 1975, 75-2 CPD 55.

Further, the qualification did not limit the government's right to award a contract to Orvedahl for either line item No. 3 or 5. Finally, Orvedahl's limitation on the dollar amount of award it would accept did not change Orvedahl's obligation to perform the work on any contract it was awarded in accordance with the requirements of the IFB.

Consequently, Orvedahl's protest is sustained.

The Air Force has informed us that performance on this contract did not begin yet. We therefore recommend that the Air Force terminate its contract for item No. 3 with Peterson and award the contract to Orvedahl. Since we are making this recommendation for remedial action, we are not considering Orvedahl's request for bid preparation costs.

Since this decision contains a recommendation for corrective action, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with 31 U.S.C. § 720, as adopted by Public Law 97-258 (formerly 31 U.S.C. § 1176 (1976)). This section requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.


for Comptroller General
of the United States