



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delco Industrial Textile Corporation

File: B-223968

Date: October 29, 1986

DIGEST

Where IFB states that a first article test report is required and cautions bidders that failure to include a price for the report or indicate that it would be furnished at no charge may result in rejection of the bid, bid which does not indicate a price for the report is properly rejected as nonresponsive, despite the fact that no separate line item for the first article report was set forth and no blank space was provided bidders to price this item, since IFB clearly required bidders to provide this information and agency's failure to include a separate line item in the IFB or space for pricing the item does not excuse the bidder from providing this information.

DECISION

Delco Industrial Textile Corporation (Delco) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DLA400-86-B-6526 issued by the Defense Logistics Agency (DLA) for various quantities of human remains pouches. Delco's bid was rejected for failure to acknowledge amendment No. 0002 to the IFB. Delco argues that it was not required to acknowledge the amendment since it was not properly issued by DLA. In addition, Delco contends that the amendment was not material so as to require rejection of the bid.

We deny the protest.

The IFB was issued on April 16, 1986, and the IFB's item description indicated that first article approval was required and that a first article test report shall be submitted. In addition, bidders were advised on page 10 of the IFB as follows:

"FIRST ARTICLE APPROVAL IS REQUIRED. CONTRACTOR IS REQUIRED TO HOLD ONE APPROVED FIRST ARTICLE UNIT UNTIL FINAL PRODUCTION RUN HAS

037216

BEEN APPROVED AND ACCEPTED. CAUTION: FAILURE TO SET FORTH A PRICE FOR THE ARTICLE TEST REPORT OR TO INDICATE THAT SUCH REPORT IS OFFERED AT NO CHARGE MAY RESULT IN REJECTION OF YOUR OFFER."

There was no separate line item for the first article test report nor was a definite space provided for bidders to price this item.

On April 29, DLA issued amendment No. 0001 deleting certain quantities and on May 7, a telex was sent to all bidders indicating that a separate line item for the first article test report would be added to the IFB. The telex stated that formal amendment No. 0002 was to follow and DLA indicates that amendment No. 0002 was mailed to all bidders, including Delco, on May 12.

Fourteen bids were received by DLA on the May 16 bid opening date. Eleven bidders, either formally or constructively, acknowledged receipt of amendment No. 0002. Delco did not acknowledge the amendment nor did it indicate that the first article test report would be provided at no charge. After determining that the first article approval could not be waived for Delco, DLA rejected the bid as nonresponsive.

Delco acknowledges that it received the telex sent by DLA on May 7. However, Delco argues it never received the formal amendment and that the telex notification was not sufficient to amend the IFB. Also, Delco disputes DLA's assertion that it mailed the amendment on May 12 and argues that DLA's own records, furnished as part of the agency's administrative report, indicate that the amendment was mailed on May 18, 2 days after bid opening. Furthermore, Delco contends that amendment No. 0002 was not material since a first article test report was clearly required by the original IFB and amendment No. 0002 merely clarified an existing requirement by requiring bidders to price the item separately. Delco argues that it was already obligated to provide DLA with a first article test report, that it is willing to provide the report at no charge, and that its failure to separately price this item should be waived as a minor informality.

DLA's response is based on its assertion that amendment No. 0002 was mailed on May 12 and that Delco bears the risk of nonreceipt. DLA contends that the amendment is material because it added the requirement for the first article test report and by failing to acknowledge the amendment, Delco was not legally obligated to provide DLA with the report. Accordingly, DLA argues that Delco's bid was properly rejected.

A bid which does not include an acknowledgment of a material amendment must be rejected because absent such an acknowledgment, the bidder is not obligated to comply with the terms of the amendment, and its bid is thus nonresponsive. Emmett R. Woody, 63 Comp. Gen. 182 (1984), 84-1 CPD ¶ 123. An amendment is material, however, only if it would have more than a trivial impact on the price, quantity, quality or delivery terms the government would have to accept were it to award a contract not containing the amendment. Federal Acquisition Regulation, 48 C.F.R. § 14.405 (1985).

We find that Delco's bid was properly rejected as nonresponsive. DLA's failure to include in the IFB a specific line item for pricing the report or to provide a space for bidders to insert a price for the item does not excuse Delco from omitting this information from its bid where the IFB states that failure to provide such information may result in rejection of the offer. 52 Comp. Gen. 886 (1973). We point out that there was more than ample space for Delco to insert a price next to the IFB requirement for the first article test report or to indicate that it would be provided at no charge. When a bidder fails to submit a price for a required item, the bidder generally cannot be obligated to provide that item as part of the other items or services for which prices were submitted. Makoor Products Mfg. Co., (B-222154, Mar. 13, 1986, 86-1 CPD ¶ 255. A first article test report requirement is material and Delco cannot be legally required to provide the report since there is no indication in Delco's bid of its intent to be bound. While Delco argues that it was obligated to provide and would provide DLA with a first article report at no charge, there is nothing in its bid which supports Delco's stated intent. Therefore, while we agree with Delco that the amendment was not material, the bid was properly rejected.

The protest is denied.

for *Seymour S. Fros*
Harry R. Van Cleve
General Counsel