



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: B&T International, Inc.
File: B-224284
Date: December 8, 1986

DIGEST

1. Bidder's return of signed Standard Form 33, which includes Table of Contents listing cover sheet as one section of the bidding document, serves to incorporate the cover sheet, although not returned, into the bid.
2. Agency improperly rejected bid as nonresponsive for failure to acknowledge an amendment which merely clarified a period of performance already imposed by the only reasonable reading of inconsistent terms in the cover sheet and the solicitation.

DECISION

B&T International, Inc., protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. 9FC0-OKU-A-A1337/86, issued by the General Services Administration (GSA), Office of Federal Supply and Services. B&T contends that the rejection for failure to acknowledge an amendment was improper.

We sustain the protest.

The solicitation, issued on April 14, 1986, contemplated the award of requirements contracts for various types of aluminum alloy pans to be delivered throughout the United States. As initially issued, it provided that the period of performance would be from July 1, 1985, or date of award, whichever was later, through June 30, 1986. Attached to the IFB was a cover sheet which provided that the period of performance would be from July 1, 1986, through June 30, 1988. The cover sheet specifically stated "This notice should be removed before offer is submitted to GSA." On April 21, GSA issued a clarifying amendment that, consistent with the cover sheet, stated that the contracts to be awarded would be for the period through June 30, 1988.

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At the May 14 bid opening, B&T was the apparent low bidder on four line items covering aluminum foil pie pans. GSA, however, found B&T's bid nonresponsive because of its failure to acknowledge the clarifying amendment. Therefore, the agency awarded contracts to Anchor Equipment Co., Inc., and Bunzl U.S.A., the next-low bidders for items 20 and 21-23, respectively.

B&T contends that it did not acknowledge the amendment solely because GSA failed to furnish it with a copy, and that there was no lack of diligence on B&T's part. In view of these circumstances, B&T suggests that its bid should be considered responsive or that its failure to acknowledge the amendment should be waived as a minor informality. B&T maintains that it prepared its bid in anticipation of the contract term specified in the cover sheet, and that its supplier of the aluminum foil pie pans can confirm that it quoted prices based on a 2-year contract term.

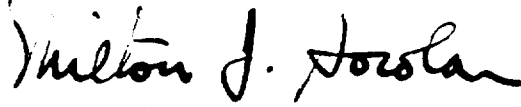
A bidder's failure to acknowledge receipt of a material amendment renders the bid nonresponsive as, absent such an acknowledgment, the government's acceptance of the bid would not legally obligate the bidder to meet the government's minimum needs as set forth in the amendment. See Four Seasons Maintenance, Inc., B-213459, Mar. 12, 1984, 84-1 CPD ¶ 284. However, an amendment that merely clarifies an existing solicitation requirement is not material, and, accordingly, a bidder's failure to acknowledge such an amendment is waiveable as a minor informality. Uffner Textile Corp., B-215991, Nov. 30, 1984, 84-2 CPD ¶ 591; see Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.405 (1985). In such a case, the contractor is already obligated to meet the requirement even without the amendment, and the government obviously suffers no prejudice from accepting the bid.

The latter is the case here. Although the solicitation package, as initially issued, contained two apparently inconsistent periods of performance, the intended period of performance was clear. The 1986 termination date, set forth on page 2 of the solicitation, was obviously in error. Under this provision, the contracts to be awarded could have run at most for a period of 45 days, i.e., from the scheduled bid opening date of May 14, 1986, until June 30 of that year. It is unlikely that GSA would contemplate the award of requirements contracts for such a short period of time. This

period, moreover, was at odds with the stated contract estimates, which greatly exceeded amounts that would be likely to be ordered in 45 days. It was thus reasonable for B&T to ignore this term and instead to rely on the correct term, as stated in the cover sheet. In this regard, we note that the cover sheet (GSA Form 1602) was part of the Solicitation, Offer and Award: the Table of Contents, set forth on page 1 of the IFB (Standard Form 33), lists GSA Form 1602 as section A of the Solicitation/Contract. See Werres Corp., B-211870, Aug. 23, 1983, 83-2 CPD ¶ 243 (bidder's return of signed Standard Form 33, which includes Table of Contents listing all sections comprising the bidding document, serves to incorporate all of the provisions into the bid); cf. William Gauger & Sons, B-194515, June 27, 1979, 79-1 CPD ¶ 460 (low bidder's return of signed cover sheet, incorporated by reference in IFB, indicates intent to be bound).

We therefore conclude that B&T was on notice of the 2-year contract term, although the firm, as instructed, did not return the cover sheet with its bid, and that it clearly intended to be bound for the entire period. The amendment merely clarified a requirement already imposed by the solicitation, and we therefore find that GSA acted improperly in rejecting B&T's bid as nonresponsive for failure to acknowledge it.

The protest is sustained. In view of this conclusion, we are recommending that GSA terminate the contracts awarded to Anchor Equipment Co., Inc. for item 20 and to Bunzl U.S.A. for items 21-23 for the convenience of the government. It should then award a contract to B&T for these items, if otherwise appropriate.

for 
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