



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Record Press, Inc.

File: B-225517

Date: March 20, 1987

DIGEST

Bid for printing of judicial opinions on which bidder drew a series of diagonal lines across Schedule page for "rush work," although solicitation instructed bidders to enter a notation of "No Charge" for items for which no separate additional charge will be made, does not constitute an offer to perform that portion of the work and should have been rejected as nonresponsive.

DECISION

Record Press, Inc. protests the award of a contract to Electrographic Corporation for the printing of slip opinions for the United States Court of Appeals for the Second Circuit under invitation for bids (IFB) No. NYSAC-87-01, issued by the Administrative Office of the United States Courts. The protester argues that the bid of Electrographic was nonresponsive because Electrographic had crossed out a page of the bid Schedule and that, through post-bid opening correspondence, the contracting agency improperly permitted Electrographic to correct an error as a result of which Electrographic displaced Record Press as the apparent low bidder.

We sustain the protest as to the first ground.

The solicitation called for the printing, as required, of slip opinions for the Court of Appeals for the Second Circuit for an initial contract period of 1 year with two 1-year options.

A portion of the solicitation Schedule requested bids for "rush work." Included in this section were some nine line items calling for prices for each of three fiscal years, and the submission of prices for these items was not optional.

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This listing covered substantially all of one page of the solicitation Schedule. In this section of its bid, Electrographic entered no notation on the blank spaces provided for prices, and drew a series of diagonal lines across the page upon which these items appeared. In this connection, we note that section C.1.5. of the solicitation provided: "[o]fferor should enter No Charge (N.C.) for materials and services which the offeror will supply without additional separate charge." We note that, aside from the "rush work" portion of the solicitation Schedule, Electrographic entered a notation of "N/C" for some 42 separate line items.

Record Press argues that Electrographic's crossing out of the "rush work" provision of the solicitation Schedule rendered Electrographic's bid nonresponsive, particularly in light of the solicitation's instructions quoted above and the fact that Electrographic entered a notation of "N/C" in some 42 other places.

The agency responds that it reasonably interpreted the crossing-out of the "rush work" provisions in Electrographic's bid as meaning that Electrographic intended to render rush work services at no additional charge. This interpretation, according to the contracting officer's affidavit, was arrived at because Electrographic had submitted bids in a similar fashion for other solicitations. The agency also contends that the solicitation's instructions relating to the entry of No Charge or "N/C" for those items in the solicitation for which no additional charge would be made were only recommendatory in nature rather than compulsory. Finally, the agency contends that the notation of "N/C" would have been inappropriate since Electrographic did not intend to perform rush work gratuitously but rather intended to perform such work at its regular rates. According to the agency, this interpretation is reasonable since the requirements of the solicitation were not severable and Electrographic, in a cover letter accompanying its proposal, indicated an intent to meet all of the court's requirements.

A responsive bid represents an unequivocal offer to perform the exact thing called for in the solicitation; thus acceptance thereof will legally bind the offeror to perform in accordance with all the material terms of the solicitation. By contrast, a bid which is nonresponsive to one or more material terms of a solicitation will not legally bind an offeror with respect to those nonresponsive items upon

acceptance of the bid. See generally Spectrum Communications, B-220805, Jan. 15, 1986, 86-1 C.P.D. ¶ 49. As a general rule, a bid must be rejected as nonresponsive if it is submitted without a price for every item requested by the IFB. Syracuse Safety-Lites, Inc., B-222640, July 1, 1986, 86-2 C.P.D. ¶ 3.

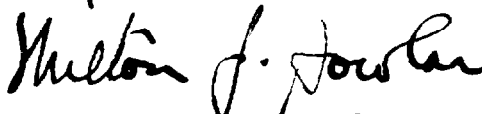
We have recognized an exception to the general rule stated above where a bid contains a "N/C" (No Charge) or other similar notation which indicates clearly a bidder's intent to be affirmatively bound to provide the item called for in the solicitation at no charge. Syracuse Safety-Lites, Inc., B-222640, supra.

Electrographic's bid was nonresponsive and should have been rejected. First, whether the instructions to bidders to enter a No Charge or "N/C" notation for services which were to be rendered at no additional charge were recommendatory or compulsory in nature is fundamentally irrelevant since a failure to enter either a dollar amount or "N/C" or other similar notation for each line item of the bid would result in the bidder's not being legally bound to perform the services called for in the line item. Second, the fact that Electrographic may have previously performed rush work, when requested, at its regular prices under other contracts containing crossed out "rush work" provisions does not create a legally enforceable obligation for Electrographic to perform in a similar fashion under a contract awarded under this solicitation. Third, we find to be without merit the suggestion that it would have been inappropriate for Electrographic to enter "N/C" for rush work since it did not intend to perform the work gratuitously. The instructions to bidders clearly indicate that the "N/C" notation was to be used in the case of goods or services to be provided at no additional, separate charge (i.e., no charge above and beyond amounts charged for goods and services elsewhere in the solicitation). Finally, we do not believe that the language of the cover letter accompanying Electrographic's bid creates a legally enforceable obligation for that firm to perform the rush work in accordance with the solicitation. The letter merely states ". . . we hope you find this proposal meets all of the Court's requirements." As such, the bid should have been rejected. Accordingly, the protest is sustained on these grounds.

Since we conclude that the bid of Electrographic should have been rejected as nonresponsive, and sustain the protest on that basis, we deem it unnecessary to render a decision

regarding the second issue raised by the protester. In light of our decision to sustain the protest, we recommend to the Director of the Administrative Office of the United States Courts that the contract with Electrographic be terminated for convenience and award be made to Record Press, if otherwise appropriate. See Bid Protest Regulations, 4 C.F.R. § 21.6 (1986), and Sabreliner Corporation, 64 Comp. Gen. 325 (1985), 85-1 C.P.D. ¶ 280.

The protest is sustained.

for 
Comptroller General
of the United States