



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** The Recorder  
**File:** B-225593  
**Date:** March 26, 1987

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### DIGEST

Bidder's note on bid that price offered under invitation for bids to print and mail legal opinions is conditioned on electronic transmission of opinions in a particular format did not constitute a qualification rendering bid nonresponsive since solicitation essentially provided that the specified format would be used anyway.

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### DECISION

The Recorder protests the award of a requirements contract to Electrographic Corporation under invitation for bids (IFB) No. CANAC-87-01, issued by the Administrative Office of the United States Courts for printing and mailing slip opinions of the U.S. Court of Appeals for the Ninth Circuit. The Recorder, the incumbent contractor, contends that it should have been found the low responsive bidder and therefore should have been awarded the contract.

We deny the protest.

The IFB contemplated the award of a firm, fixed-price, indefinite-quantity requirements contract for fiscal year 1987, with 2 option years, and invited bids for printing an estimated 900 opinions; daily collating and mailing five copies of each slip opinion to not more than 38 addresses; and weekly collating and mailing of one copy of each slip opinion to not more than 500 addresses. The IFB provided that electronic transmission of slip opinions to the contractor would be used in all but extraordinary circumstances, although the opinions could be provided in writing (manuscript). The IFB stated:

"The electronic files will be in either ANSI format,<sup>1/</sup> or will be files generated by the court's word processing software (Office Power, by C.C.I.). The contractor will be responsible for full systems integration and testing."

The IFB stated that the total price for the 2 option years would be added to the total price for the basic requirement, and that award would be made to the lowest responsive, responsible bidder.

Of the three bids received, The Recorder's and Electrographic's bids were lowest. Electrographic's bid of \$17.00 to print each opinion page was conditioned, according to a note on the bid schedule, on receipt in electronic form,

". . . of uniformly formatted or coded opinion text identifying the beginning (or end) of each text paragraph, major or minor opinion heads, unique text placement, including indented paragraphs, footnotes and footnote references, and typeface changes."

Electrographic stipulated that if the stated conditions were not met, its price would increase by \$2.00 per opinion page (to \$19.00), and if a manuscript rather than an electronically-transmitted opinion was provided, the price would increase by \$4.00 per page (to \$21.00). The total bid submitted by Electrographic for the 3-year period, considering all bid items, was evaluated at \$833,590.34, which was almost \$95,000 less than The Recorder's bid of \$928,522.10.

The Recorder notes that all prospective bidders were required to print a sample opinion from data that was electronically transmitted by the Ninth Circuit. The protester contends that the data provided did not conform to any of the conditions upon which Electrographic's \$17.00 per page bid was based, so that the firm's bid should have been evaluated at \$19.00 per page. On that basis, The Recorder asserts that its total bid was lowest.

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<sup>1/</sup> ANSI is the acronym for the American National Standards Institute, and an ANSI format is a document format designed to be independent of any particular vendor's equipment.

The Administrative Office responds that two files were transmitted in the sample exercise: a "print ready" file created by the court's word processing software and a copy of the word processor file with all the formatting codes which, the agency says, satisfies the conditions in Electrographic's bid note. The Administrative Office states that its technical staff evaluated Electrographic's \$17.00 bid conditions and determined that the communications and word processing software to be utilized to transmit data to the contractor both created and maintained electronic codes that met Electrographic's requirements. The contracting officer therefore evaluated Electrographic's bid at \$17.00 per page.

Resolution of this protest depends on whether Electrographic's bid of \$17.00 per page for electronically-transmitted documents was responsive, that is, whether it represented an unequivocal offer to meet the solicitation's material requirements. Free-Flow Packaging Corp., B-204482, Feb. 23, 1982, 82-1 C.P.D. ¶ 162. If the ANSI and Office Power formats in fact create and transmit documents that meet the criteria set forth in the note on Electrographic's bid, so that the firm was offering, at \$17.00, precisely what the government wanted, the Administrative Office's evaluation and award were correct. In that case, Electrographic's note was of no real consequence, because if the government were to transmit a document in a format that does not meet those conditions, the government would be asking Electrographic to do work not stated in the specifications, and the firm would be entitled to an additional payment, as would any contractor.

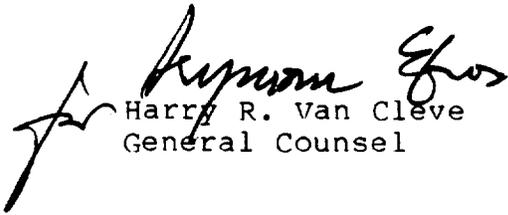
If, however, Electrographic's bidding note imposed conditions on the government different from the conditions on which bids were invited, the bid of \$17.00 per page could not be accepted, since acceptance would obligate the government, in order to take advantage of the \$17.00 price, to transmit data in a way other than the ways the government said it was going to transmit. See John C. Grimberg Co., Inc.--Request for Reconsideration, B-218231.2, Apr. 26, 1985, 85-1 C.P.D. ¶ 478. In that event, the bid would have to be evaluated at \$19.00 per page, which was, in effect, an alternate bid price that unquestionably met the invitation's terms. See L.B. Foster Co., B-222593, Aug. 18, 1986, 86-2 C.P.D. ¶ 191.

We think the bid properly was evaluated at the \$17.00 price. As stated above, the Administrative Office concluded that Electrographic's note imposed nothing on the government that the government did not already say it would do. Neither The Recorder's protest material, nor our own review of the procurement, shows that the conclusion that the conditions in

Electrographic's note were consistent with whichever format, of the two stated in the IFB, in which the government would choose to transmit, was unreasonable.

In its comments on the agency report, The Recorder alleges that the Administrative Office incorrectly calculated the bids for collating and mailing opinions. The Recorder maintains that proper calculation would cut the difference between the two bids almost in half. We need not decide this issue, however, since The Recorder concedes that even using its calculations Electrographic's bid would have remained low.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel