



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arnel, Inc.
File: B-228889
Date: October 21, 1987

DIGEST

A bid that includes preprinted terms and conditions that vary from the terms and conditions in the solicitation is nonresponsive.

DECISION

Arnel Inc. protests the rejection of its apparent low bid as nonresponsive under invitation for bids (IFB) No. DAADO5-87-B-0506 issued by the United States Army, Aberdeen Proving Ground, Maryland, for a multipoint permeation analyzer, which analyzes gases for concentration of sulfur- or phosphorous-containing organics. The Army rejected Arnel's bid because it included, on the back of an attached standard commercial quotation form, numerous preprinted terms and conditions that the contracting officer found were inconsistent with the IFB requirements. Arnel argues that it used its standard form only "to add detail and technical credence to our proposal" and that by completing the bid package it indicated its agreement to be bound by the terms of the IFB.

We deny the protest.

Under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-2(a) (1986), any bid that fails to conform to the essential requirements of the IFB must be rejected as nonresponsive because, if accepted by the government as submitted, it would not obligate the contractor to perform the contract in exact conformance with all material provisions of the solicitation. Ansonia Copper & Brass, Inc., B-227002, July 23, 1987, 87-2 C.P.D. ¶ 76. A bid's responsiveness must be determined from the bid itself at the time of bid opening and any extraneous documents, including standard forms, must be considered a part of the bid for the

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purposes of making that determination. See HBH, Inc., B-225126, Feb. 26, 1987, 87-1 C.P.D. ¶ 222. We have specifically held that a bid that includes preprinted terms and conditions that vary from the IFB requirements is nonresponsive. See Ansonia Copper & Brass, Inc., B-227002, supra, 87-2 C.P.D. ¶ 76 at 2; The Homer D. Bronson Co., B-220162, Nov. 22, 1985, 85-2 C.P.D. ¶ 591.

Arnel does not dispute that the provisions preprinted on the back of its standard form conflicted with the IFB, but argues that its act of completing and signing the bid package negated those provisions and indicated its acceptance of the IFB requirements. Arnel adds that "[n]owhere in our proposal did we state 'Arnel's terms and conditions take precedence over U.S. Procurement terms and conditions.'"

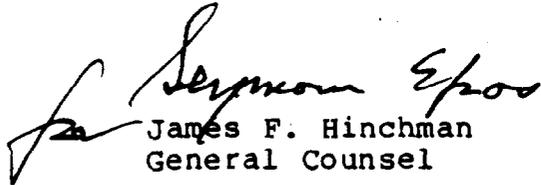
We disagree. On the Schedule page of its bid package, immediately beneath its entered prices, Arnel specifically referred to its attached "detailed quotation" by adding a line stating "[s]ee detailed quotation No. Q-89087-2 enclosed." Attached to the end of Arnel's bid was a five-page "detailed quotation," bearing that number, typed on Arnel's standard quotation form. On the back of each form was a list of 13 preprinted provisions, labeled "Terms and Conditions of Sale." Item 6, entitled "Order Precedence" stated, in pertinent part, "[t]hese terms and conditions of sale and any attachments take precedence over Buyer's additional or different terms and conditions, to which notice of objection is hereby given." Item 13e, under the heading "Miscellaneous," stated further that "[n]o U.S. Government Procurement Regulations shall be included hereunder and binding on either party unless specifically agreed to in writing prior to incorporation herein." Among Arnel's terms and conditions at variance with those included in the solicitation were those relating to bid acceptance period, sales and use taxes, delays in performance, delivery dates, and costs of shipment and risk of loss.

As noted above, Item 6, "Order Precedence," preprinted on the back of Arnel's standard form containing its "detailed quotation," expressly made Arnel's terms and conditions a part of its bid and rejected the IFB provisions to the extent they were additional to or different from Arnel's own provisions. Also, there was no prior written agreement between Arnel and the Army, as was required by Arnel's Item 13e, which would have made federal procurement regulations applicable to Arnel's bid. Arnel's bid was, therefore, plainly rendered nonresponsive by its inclusion of its own preprinted terms and conditions which varied from the IFB.

Our conclusion is not changed by Arnel's statement in its protest that it did not intend to modify the IFB terms and conditions. Since only material available at the time of bid opening may be considered in making a responsiveness determination, Arnel's post-opening statements concerning its intent cannot be considered. See HBH, Inc., B-225126, supra, 87-1 C.P.D. ¶ 222 at 2. In addition, Arnel's nonresponsive bid may not be corrected after bid opening in order to be made responsive since Arnel would have the competitive advantage of choosing to accept or reject the contract after bids are exposed. See Ansonia Copper & Brass, Inc., B-227002, supra, 87-2 C.P.D. ¶ 76 at 3.

Arnel also argues that by rejecting its bid, the Army will be spending approximately \$33,000 more in awarding to the next lowest bidder. Although rejection of Arnel's bid may result in additional cost to the government on this procurement, we have consistently held that a nonresponsive bid may not be accepted, even though it would result in savings to the government, since such acceptance would compromise the integrity of the competitive bidding system. See The Homer D. Bronson Co., B-220162, supra, 85-2 C.P.D. ¶ 591 at 4.

The protest is denied.


James F. Hinchman
General Counsel