



The Comptroller General
of the United States

Washington, D.C. 20548

Pietro Vito

Decision

Matter of: Wyoming Weavers, Inc.

File: B-229669.3

Date: June 2, 1988

DIGEST

1. Even though solicitation's bid sample provision did not state the characteristics that the sample must meet, procuring agency may reject bid where it is clear from the sample that the bidder intended to qualify bid by taking exception to the specifications.

2. Protest that agency should make multiple awards representing the lowest overall cost to the government is denied where the only reasonable interpretation of invitation for bids is that it contemplated and authorized an aggregate award.

DECISION

Wyoming Weavers, Inc. (WWI), protests the rejection of its low bid as nonresponsive to invitation for bids (IFB) No. IPI-0001-8, issued by Federal Prison Industries, Inc., a federally-owned corporation trading as UNICOR. The solicitation sought a source for the supply of two types of nylon upholstery fabric. UNICOR rejected WWI's bid because it found one of the four samples submitted by WWI to be unacceptable.

We deny the protest.

The IFB contemplated the award of a requirements contract for 1 basic and 4 option years. Bidders were instructed to provide unit and extended prices for estimated quantities of two groups of fabric. Section C of the IFB set forth the fabric specification requirements, including flammability, width, color and patterns, tensile and tear strength, seam slippage, lightfastness and abrasion.

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The IFB also required bidders to submit samples with their bids:

"Samples: A minimum of four woven, finished samples, each 36 by 54 inches, must be submitted with the bid: one solid and one multicolor from Group A, and one solid and one multicolor from Group B."

The standard bid samples clause contained in the IFB provided that samples had to be received by the time specified for receipt of bids and would be evaluated to determine compliance with the characteristics listed for examination in the IFB. Bidders were further informed that samples that failed to conform would require rejection of the bid. See Federal Acquisition Regulation (FAR) § 52.214-20 (FAC 84-13).

UNICOR received the following five bids:

	Group A	Group B	Total
Wyoming Weavers	\$ 937,500	\$157,000	\$1,094,500
Absecon Mills	987,000	134,000	1,121,000
Warren Corp.	1,017,000	139,600	1,156,600
Craftex	1,155,000	150,000	1,305,000
Paetz & Sons	1,192,000	No Bid	---

Warren Corp. protested that both WWI and Absecon Mills were nonresponsive because their bid samples failed to conform to the requirements of the IFB. See Warren Corp., B-229669.2, Mar. 10, 1988, 88-1 CPD ¶ 249. UNICOR rejected WWI's bid as nonresponsive but determined that Absecon's bid was responsive. We denied Warren's protest without deciding whether WWI's bid was nonresponsive, because we found Warren's contentions regarding Absecon's lower bid to be without merit.

Bid Samples

The IFB specified various colors and patterns of upholstery fabric that UNICOR might order under the requirements contract and informed offerors that the colors and patterns of fabric must be in accordance with the UNICOR Upholstery Fabric Bulletin 86-27. WWI submitted the four samples requested by the IFB, and UNICOR determined that the color of WWI's "China Blue" sample for the Group B fabric was not acceptable but that WWI's other samples were fully responsive. WWI contends that since the IFB did not specifically list color as a characteristic for which samples would be examined, the alleged discrepancy in color could not render its bid nonresponsive.

Where bid samples are required to assure the procurement of an acceptable product, the invitation for bids must list all the characteristics for which the samples will be examined. FAR § 14.202-4(e)(1)(ii) (FAC 84-5). Thus, we have held that where a solicitation's bid sample provision does not state the characteristics that the sample must meet, it would be improper to reject the bid unless it is clear from the sample that the bidder intended to qualify the bid by taking exception to the specifications. See ADT-American Co., 63 Comp. Gen. 549 (1984), 84-2 CPD ¶ 229.

Here, the IFB's bid sample provision does not state the characteristics the sample must meet. While the IFB lists detailed specifications, including color, which the fabric to be procured must meet, the bid sample provision does not reference these specifications or otherwise identify any characteristics that will be examined. It is well settled that bid samples need not meet every specification requirement that items under the contract must meet and therefore are to be evaluated only for those characteristics set out in the bid sample clause. 49 Comp. Gen. 311 (1969).

Because the bid sample provision does not set out color as a characteristic for which samples would be examined, UNICOR can only reject WWI's bid as nonresponsive on the basis of the "China Blue" sample if it reasonably determines that WWI intended to qualify its bid by the submission of the sample. ADT-American Co., 63 Comp. Gen. at 550, *supra*. We have examined WWI's "China Blue" sample and find that there is a discernible and marked difference in color and pattern between WWI's "China Blue" sample and the UNICOR Upholstery Fabric Bulletin.^{1/} Therefore, we find that UNICOR reasonably could conclude that WWI's sample did not meet UNICOR's "China Blue" requirement. Moreover, unlike the situation in ADT-American Co., where it was clear that a bidder who submitted unfinished samples did so only for evaluation of certain features and was not proposing to furnish an unfinished end product, here WWI submitted four samples, each a different color, purporting to comply with four of the colors specified in the IFB. Three of the colors matched the UNICOR Bulletin; the "China Blue" sample did not. Under these circumstances, we think it reasonable to conclude that the color and pattern of WWI's "China Blue" sample is the color and pattern that WWI would provide under the contract and, thus, that WWI qualified its bid by taking exception to the IFB "China Blue" requirement. To be

^{1/} An informal conference, pursuant to 4 C.F.R. § 21.5(a) (1988), was held at WWI's request. At this conference we requested and received for the record WWI's "China Blue" bid sample and the UNICOR Upholstery Fabric Bulletin 86-27.

considered for award, a bid must comply in all material respects with the invitation for bids. FAR § 14.301(a) (FAC 84-5). Since WWI's "China Blue" sample does not comply in all material respects with the invitation, it is nonresponsive.

Multiple Awards

WWI also argues that even if its "China Blue" sample was unacceptable it is entitled to an award of the Group A fabric as the low, responsive bidder on this line item. We disagree.

The award clause of the IFB provides that UNICOR "may accept any item or group of items of a bid. . . ." FAR § 52.214-10(c) (FAC 84-5). However, the IFB also contains the following provision:

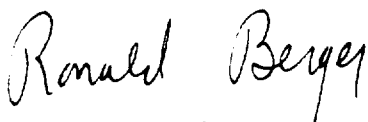

"All-or-nothing: Partial bids on this solicitation will not be considered. Bids must be made for all items, to all destinations, for the entire contract period, including options."

UNICOR contends that the more specific language of the "all-or-nothing" clause clearly indicates the agency's intent to make an aggregate award. WWI, however, argues that the clause requires bidders to price all items but does not waive UNICOR's right under the award clause to make multiple awards.

The language of the standard award clause allows award to be made on an item basis when the IFB does not specifically require an aggregate award. Talbott Development Corp., B-220641, Feb. 11, 1986, 86-1 CPD ¶ 152. When an aggregate award is required by the IFB, however, the agency must award on that basis. Blue Bird Coach Lines, Inc., B-200616, Jan. 28, 1981, 81-1 CPD ¶ 51. Here we think it clear that the tenor of the IFB was that an aggregate award was contemplated. The IFB stated that partial bids would not be considered, bidders were required to submit prices for all items, and the IFB did not contain the "Evaluation of Bids for Multiple Awards" clause required to be inserted in the solicitation if the contracting officer determines that

multiple awards might be made. See FAR § 14.201-6(q) (FAC 84-15). Under similar circumstances, we concluded that an aggregate award was contemplated. See, e.g., Duradyne, Inc., B-212922, Dec. 20, 1983, 83-2 CPD ¶ 6; General Aero Products Corp., B-191870, July 25, 1978, 78-2 CPD ¶ 70. We see no reason not to reach the same conclusion here.

The protest is denied.


 James F. Hinchman
General Counsel