

Howe



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Gelco Payment Systems, Inc.

**File:** B-234957

**Date:** July 10, 1989

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### **DIGEST**

1. Bid which attempts to limit government's rights and supplement bidder's rights under the termination for convenience clause in an invitation for bids (IFB) is nonresponsive since it contains a material deviation from the terms of the IFB.
2. Bid is nonresponsive where bidder's total price cannot be determined from the bid documents submitted at bid opening.
3. A bidder may not be afforded an opportunity after bid opening to explain or clarify its bid so as to make it responsive, since the bidder's intention must be determined from the bid and material available at bid opening.

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### **DECISION**

Gelco Payment Systems, Inc., protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. WASO-88-50, issued by the National Park Service (NPS) for a third-party draft payment system.

We deny the protest.

The IFB calls for the contractor to implement and maintain a third-party draft payment system that allows NPS to make selected payments using payment instruments rather than cash. The bid schedule listed estimated quantities of drafts for the base year and 4 option years. Bidders were to enter a unit price for all services per year and multiply those prices by the estimated quantities to arrive at the extended prices.

Gelco entered unit and extended prices on its bid schedule, but then annotated the schedule with a notation at the top of the page which stated: "These fees are for basic

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services. Keying of accounting data is an additional cost option." Keying accounting data is one of the tasks called for by the IFB. Gelco attached to its bid schedule a separate sheet showing unit and extended prices for keying accounting data. Gelco also included with its bid another supplemental sheet entitled "standard government fees," which listed either unit or lump sum prices for certain required items such as start-up fees and maintenance fees. Additionally, Gelco included with its bid a lengthy "technical proposal" describing its offered systems in detail. In part, the technical proposal stated that any contract under the IFB may be terminated by either party on 30 days' notice.

NPS rejected Gelco's bid as nonresponsive based on its conclusion that it could not determine Gelco's bid price. The agency also maintains that Gelco's bid was nonresponsive because it took exception to certain standard provisions in the IFB such as the termination for convenience clause.

We find that Gelco's bid was properly rejected as nonresponsive because its bid price was ambiguous and its bid took exception to a material requirement of the IFB.

To be responsive, a bid must comply in all material respects with the IFB. See Federal Acquisition Regulation (FAR) § 14.301(a) and (c). A bidder's intention to be bound by the solicitation requirements must be determined from the bid itself at the time of bid opening. Franklin Instrument Co., Inc., B-204311, Feb. 8, 1982, 82-1 CPD ¶ 105. Any additional documents submitted with a bid are considered a part of the bid for purposes of determining the bid's responsiveness. See Free-Flow Packaging Corp., B-204482, Feb. 23, 1982, 82-1 CPD ¶ 162. Further, under FAR § 14.404-2(d), a bid must be rejected where the bidder attempts to impose conditions that modify requirements of the IFB or limit the bidder's liability to the government; specifically, this provision requires rejection of any bid in which the bidder "limits rights of the government under any contract clause."

Here, the separate supplemental agreement attached to Gelco's bid in part states that either party may cancel the contract at its option with 30 days' notice. This provision conflicts with the standard termination for convenience clause, FAR § 52.249-2, included in the IFB, which provides that the government may terminate performance of work under the contract if the contracting officer determines that a termination is in the government's interest. Moreover, the provision purports to allow Gelco the option to cancel the contract, a right not conferred on a contractor under the

standard termination for convenience clause. Since Gelco attempted to limit the government's rights and supplement its own rights under the termination for convenience clause, its bid did not represent an unequivocal agreement to the material terms of the IFB and thus was nonresponsive. Giant Lift Equipment Mfg. Co., Inc., 63 Comp. Gen. 375 (1984), 84-1 CPD ¶ 542.


We also find that Gelco's total bid price could not be determined from the bid documents. As a preliminary matter, we do not agree with the agency that Gelco's supplemental pricing sheet for one task, keying accounting data, made the bid price ambiguous. On the contrary, the supplemental sheet clearly set out Gelco's unit and extended prices for the task, and the notation on Gelco's bid schedule indicated that the price for this task was to be added to the prices on the bid schedule. We agree, however, that Gelco's price was ambiguous due to the supplemental sheet attached to its bid schedule entitled "standard government fees."

The fees for the services listed in Gelco's "standard government fees" sheet were not expressed in the same terms as the prices called for by the bid schedule; instead, Gelco provided unit prices for certain tasks, but did not refer to any estimated quantities or provide extended prices, and lump sum prices for other tasks. As a result, it was unclear how Gelco's prices for the tasks listed on the sheet were to be calculated and how those prices related to the prices on Gelco's bid schedule. Therefore, we agree with the agency that Gelco's total bid price could not be determined from the bid documents. This also renders its bid nonresponsive. See Epcon Industrial Systems, Inc., B-216725, Dec. 27, 1984, 85-1 CPD ¶ 2.

Gelco now claims it only intended the "standard government fees" sheet as an explanation of how it calculated the unit prices listed on its bid schedule; according to Gelco, the fees listed on the supplemental sheet were not intended to be added to the prices on the bid schedule. This intention was not clear from the bid documents, however, and Gelco may not now clarify its bid after bid opening to make it responsive. Rather, Gelco's intention must be determined solely from the bid and material available at bid opening.

Caprock Vermeer Equipment, Inc., B-217088, Sept. 3, 1985,  
85-2 CPD ¶ 259. Thus, Gelco's post-bid-opening explanation  
of its bid may not be considered.

The protest is denied.

 *Supreme Court*  
James F. Hinchman  
General Counsel