

Cunningham



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: B.J. Graphics, Inc.

File: B-238194

Date: May 1, 1990

Miles V. Johnson, for the protester.
Drew Spalding, Esq., and Kerry L. Miller, Esq., Office of the General Counsel, United States Government Printing Office, for the agency.
James Cunningham, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid for printing services is nonresponsive to invitation for bids requirement that bidder certify intent to supply paper containing waste paper content (WPC) of at least 50 percent. Bidder inserted ".50" under column entitled "Offeror's Percentage" of WPC; therefore, bid must be interpreted as one-half of 1 percent for WPC or 49.5 percent less than that required.

DECISION

B.J. Graphics, Inc., has protested the rejection of its bid under invitation for bids (IFB) No. C730-S, issued by the Government Printing Office (GPO) for a 1-year requirements contract covering the printing of forms, books, and pamphlets to be produced for use by the Department of the Interior. GPO's contracting officer rejected B.J.'s bid, which was low for books and pamphlets, as nonresponsive because he determined that B.J.'s bid was "unclear" as to whether the firm had offered to utilize paper with a waste paper content (WPC) at least equal to the minimum required by the solicitation.

We deny the protest.

In implementation of statutory provisions whose purpose is to assure that items composed of recovered materials are purchased by the government to the maximum practicable extent (42 U.S.C. § 6962, Supp. V 1987), the IFB required the use of paper products containing waste paper and

048461/141322

informed bidders that they were to "certify to at least the [stipulated] minimum of waste paper" that would be supplied under this contract and that a bidder's failure to certify to at least the stipulated 50 percent minimum WPC would result in a finding by GPO that the bidder had submitted a nonresponsive bid. The IFB also provided the following certification section for the bidder to insert its WPC percentage:

"CERTIFICATION: The offeror shall certify that white offset and/or writing paper supplied under any contract resulting from this solicitation, will meet or exceed the minimum percentage of recovered materials below.

	<u>Minimum Percentage</u>	<u>Offeror's Percentage</u>
[WPC] in white offset and/or writing	50	_____ "

As to those bidders who were unable to certify to the 50 percent figure, the IFB also requested, for informational purposes only, that bidders provide on the same blank line of the IFB, the lesser percentage of WPC which was, in fact, available to them.

On the blank line under "Offeror's Percentage," B.J. wrote in ".50" in its low bid. On review of all bids, the contracting officer rejected B.J.'s bid of ".50" as nonresponsive because of uncertainty as to whether B.J.'s insertion, in conjunction with the pre-printed expression "Offeror's Percentage," meant that B.J. was bidding "one-half of 1 percent" or, instead, "50 percent."

B.J. argues that its bid was "perfectly clear, [i.e.] .50 is fifty percent" and that GPO had agreed with B.J.'s interpretation of the meaning of ".50" when B.J. had written the exact expression into its bid for a prior GPO contract. In any event, B.J. insists that GPO should have telephoned B.J. and inquired as to the precise meaning which B.J. intended by its insertion of ".50" before rejecting the company's bid as ambiguous.

GPO argues that the IFB's requirement was for a percentage expression only and that GPO could not read B.J.'s insertion of ".50" to mean only 50 percent instead of also reasonably meaning one-half of 1 percent. GPO further notes that elsewhere in the same bid B.J. conveyed its intent to bid a 2 percent prompt payment discount by inserting a whole number, rather than a decimal expression. Consequently, and

given the pre-printed expression, "Offeror's Percentage," under which B.J. inserted ".50," GPO maintains that it is inconsistent for B.J. simultaneously to argue that its insertion of the decimal ".50" should be read only as the whole number "50." Finally, GPO argues that its erroneous acceptance of an earlier B.J. bid containing a similar ".50" insertion for WPC cannot bind GPO under this IFB.

A responsive bid must clearly evidence, on its face, the bidder's intention to be bound by the essential terms and conditions of the IFB. Newport Offshore Ltd., B-234072, Feb. 1, 1989, 89-1 CPD ¶ 105.

It is clear that the required WPC certificate is material and that bidders were expressly required to commit themselves to at least a 50 percent WPC in their bids to be considered responsive. B.J. argues that its insert of ".50" must be or can reasonably only be read as meaning "50 percent." However, in our view, the ".50" need not necessarily be interpreted as "50 percent" because the IFB, as noted above, does allow bidders to enter lower percentages for informational purposes. In fact there have been occasions recently under other GPO procurements where bidders have entered in the blank provided a figure of less than 50 percent (see, for example, Victor Graphics, Inc., B-238290, Apr. 20, 1990, 90-1 CPD ¶ _____ ("zero percent")) as a means of informing GPO of the bidders' inability to comply with a 50 percent WPC specification. Presumably, if enough bidders are unable to comply with this requirement, GPO will cancel the bid package and readvertise the requirement under a lesser WPC.

Given that other bidders have bid less than 50 percent WPC under recent, relevant GPO procurements, it is apparent that a bid of much less than 50 percent WPC could reasonably be expected. Further, B.J.'s insertion of ".50" under the column entitled "Offeror's Percentage" unequivocally calls for the bid to be read as ".50 percent" which is one-half of 1 percent, or 49.5 percent lower than the minimum percentage content of 50 percent. Therefore, B.J.'s bid is clearly nonresponsive to the minimum percentage requirement for WPC.

Even if we assume, for the purpose of discussion, GPO's position that B.J.'s bid is "unclear" as to the WPC percentage bid, B.J.'s bid still must be found to be ambiguous and, therefore, nonresponsive to the WPC requirement. See Medi-Car of Alachua County, B-205634, May 7, 1982, 82-1 CPD ¶ 439. As to B.J.'s argument that GPO should have asked the company to clarify its intended percentage, we have held that a bidder may not be afforded an opportunity after bid opening to change, explain, or correct its

bid; otherwise a bidder essentially would have the option after prices of others have been exposed of accepting or rejecting the award by either correcting or not correcting the deficiency, which is inconsistent with the sealed bidding system. G&A Gen. Contractors, B-236181, Oct. 4, 1989, 89-2 CPD ¶ 308. Consequently, GPO properly did not ask B.J. to explain its intended percentage after bid opening.

Finally, the alleged erroneous award of an earlier similar contract to B.J., notwithstanding B.J.'s use of the same decimal expression (".50") for WPC, does not bar GPO from finding that B.J.'s bid is nonresponsive under this IFB. See Medi-Car of Alachua County, B-205634, supra.

We deny the protest.


for James F. Hinchman
General Counsel