



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Medical Depot Supplies Corporation

File: B-239342

Date: August 22, 1990

Charles Gubernick, for the protester.
Pamela J. Reiner, Esq., Office of the General Counsel,
General Services Administration, for the agency.
John F. Mitchell, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protester's bid for requirements contract which failed to offer at least the government's estimated peak monthly requirements as required by the invitation for bids was nonresponsive and was properly rejected.

DECISION

Medical Depot Supplies Corporation (Medical) protests the General Services Administration's (GSA) rejection of its apparent low bid as nonresponsive under invitation for bids (IFB) No. 2FYP-DP-89-0013S.

We deny the protest.

The IFB solicited prices for the agency's requirements for 32 line items of bags and envelopes organized into 7 aggregate groups. The solicitation's Method of Award clause provided that, with the exception of item 32, separate contract awards would be made for the items in the aggregate by group. The solicitation's Monthly Supply Potential (MSP) clause provided bidders with the opportunity to specify their MSP. The clause expressly cautioned each bidder that in order to qualify for award, its stated monthly supply potential for each aggregate group must at least meet the government's estimated peak monthly requirements. The IFB stated that the term of these requirements contracts would be 1 year.

Fourteen bids were submitted. Three of these, including Medical's, were for aggregate group 3 consisting of line items 15 through 18. This group is for the delivery to four

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destinations of 10- by 12-inch button and snap closure envelopes to hold engine maintenance records. Although Medical was the apparent low bidder for this group, the monthly supply potential of 5,500 units which Medical entered in its bid was lower than the government's estimated monthly peak requirement of 5,647 units. Because Medical's bid failed to comply with the solicitation, the contracting officer rejected the bid as nonresponsive. Medical filed this protest with our Office after it was notified that its bid had been rejected. No award has been made for aggregate group 3 as a result of the filing of this protest.

While admitting that its MSP represents less than the estimated peak monthly requirements for line items 15 through 18, Medical contends nevertheless that its bid should have been accepted because, according to its calculations, after 6 months and 1 week into the contract, Medical's MSP would exceed GSA's monthly requirements and because its bid is \$54,475 lower than that of the next low bidder.


In response, the agency first notes that the protester's assertion that it would start to exceed GSA's requirements halfway through the contract term is based on an assumption that at that point, GSA's peak monthly requirements would fall to only 4,852 envelopes per month. GSA states there is no factual foundation for such an assumption, and the record before us provides none. In any event, GSA argues, Medical's bid properly was rejected as nonresponsive since it deviated from a material requirement of the IFB.

To be considered responsive under a sealed bidding solicitation, a bid must constitute an unequivocal offer to comply with the material terms and conditions contained in the solicitation. Alerting Communicators of Am., B-227028 et al., Aug. 6, 1987, 87-2 CPD ¶ 134. A deficiency or deviation that goes to the substance of the bid by affecting price, quality, quantity, or delivery of the article offered is a material deviation that requires the bid to be rejected as nonresponsive. Community Metals Prods., Corp., B-229628, Jan. 15, 1988, 88-1 CPD ¶ 41.

In this regard, we have held with respect to a solicitation whose language was identical to that here, that a bidder's entry of a monthly supply potential which was less than the estimated peak monthly requirement set forth in the IFB was a deviation from the material terms of the IFB. Happy Penguin, Inc., B-202231, June 16, 1981, 81-1 CPD ¶ 497. This is because such a bidder has not undertaken the same obligation as those which have agreed to meet the government's requirements. 45 Comp. Gen. 611 (1966).

Medical's argument that its bid should have been accepted because it represents a savings to the government is also without merit. A nonresponsive bid may not be accepted, even where it might result in monetary savings to the government, since acceptance would compromise the integrity of the sealed bidding system. Systron Donner, B-230945, July 5, 1988, 88-2 CPD ¶ 7.

The protest is denied.


for James F. Hinchman
General Counsel