



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Copy Duplicating Products, Inc.

File: B-245381

Date: December 30, 1991

Judy Williams for the protester.

Millard F. Pippin, Department of the Air Force, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a procurement for copier services where the schedule in the invitation for bids required bidders to submit single unit prices for estimated subline item quantities of copies to be made and where the protester's bid did not conform to the schedule because the protester split the agency's estimated subline item quantities of copies at what it considered quantities most economically advantageous to the firm and separately priced these quantities, the protester's apparent low bid was properly rejected as nonresponsive because the protester's pricing scheme permits it to structure its bid to obtain maximum profits and to limit its economic risks in the event the agency does not make its estimated subline item quantities of copies, thus affording the protester an unfair pricing advantage over the other bidders.

DECISION

Copy Duplicating Products, Inc. (CDP) protests the rejection of its apparent low bid as nonresponsive under invitation for bids (IFB) No. F41687-91-B-0005, issued by the Department of the Air Force for copier services at Bergstrom Air Force Base and other federal locations in Austin, Texas. The agency rejected CDP's bid because the firm did not comply with the IFB's terms for submission of a bid.

We deny the protest.

The amended IFB, issued on July 19, 1991, contemplated the award of a firm, fixed-price requirements contract for the base year and 2 option years. The IFB required firms to provide to the government contractor-owned copier machines,

CDP used this same pricing structure, although it submitted other prices, for the first three subline items under each of the option year line items. Thus, instead of bidding a single unit price per copy, CDP bid a price which depends on the number of copies made by the agency. On August 26, following the rejection of its apparent low bid as non-responsive, CDP filed this protest. Pending the resolution of this protest, the agency proposes to award a contract to Monroe Systems for Business, Inc., the firm which submitted the apparent second low bid of \$341,627 for the base and option years combined. In conformance with the IFB schedule, Monroe used the agency's estimated subline item quantities and submitted single unit prices for each subline item under each of the three line items. Monroe is low by \$337 for the base year, and it is second low by approximately \$10,000 for the first option year and \$20,400 for the second option year.

CDP argues that the agency improperly rejected its apparent low bid as nonresponsive. Specifically, CDP references Federal Acquisition Regulation (FAR) § 52.207-4, a clause included in the IFB, which requested opinions from firms with respect to whether different quantities of the items would be more economically advantageous to the government. This clause afforded firms the opportunity to recommend in the space provided an "economic purchase quantity," defined as a "quantity at which a significant price break occurs," in order "to assist the government in developing a data base for future acquisitions of the items," although the government did "reserv[e] the right to amend or cancel the solicitation and resolicit . . . in the event . . . different quantities should be acquired." CDP relies on this clause as justification for its pricing structure of splitting the agency's estimated subline item quantities at what it considered advantageous economic breakpoints and submitting separate subline item unit prices--higher prices for quantities below its breakpoints and lower prices for quantities above its breakpoints--and argues that this pricing structure yields the most advantageous, lowest total price to the government.

As a preliminary matter, CDP's reliance on FAR § 52.207-4 as justification for splitting the agency's estimated subline item quantities and submitting separate subline item unit prices for this procurement is misplaced. The clause clearly states that the primary purpose of any information provided by firms concerning economic purchase quantities is to assist the agency in developing a data base for future acquisitions. The clause does not contemplate that any of the information provided on economic purchase quantities

will be used in the context of the instant procurement absent amendment or cancellation of the IFB to afford all competitors the opportunity to bid on the same economically advantageous quantities, a right which the agency reserved but did not exercise in this case. See Quantic Indus., Inc., 66 Comp. Gen. 106 (1986), 86-2 CPD ¶ 628. The clause confers no right upon a bidder to alter unilaterally the pricing format of the IFB schedule or to structure its bid in a manner different from that required by the IFB. Here, the IFB unequivocally required firms to submit single, not separate, unit prices for each subline item based on the agency's estimated subline item quantities as listed in the IFB schedule, and the protester clearly did not comply with this requirement.


We have consistently held that the award of government contracts pursuant to the rules of sealed bidding must be made on the same terms that they were offered to all bidders by the invitation. See Silvaseed Co., B-213900, May 22, 1984, 84-1 CPD ¶ 545. An irregularity in a bid resulting in benefits to a bidder not extended to all bidders by the invitation, and which is prejudicial to the other bidders, renders the bid nonresponsive. See New World Technology, B-237158, Jan. 19, 1990, 90-1 CPD ¶ 77; Thomas Constr. Co., Inc., B-184810, Oct. 21, 1975, 75-2 CPD ¶ 248; FAR § 14.404-2(d) (FAC 90-5).

Here, each firm was required to submit for each subline item a single unit price per copy in conformance with the IFB schedule. However, for three of the subline items under each line item, CDP deviated from the IFB schedule by splitting the estimated subline item quantities and pricing these smaller quantities separately. While this type of pricing structure yields a total bid for evaluation purposes, the higher unit prices for the initial quantities afford CDP the opportunity to realize more of a profit at the earlier stages of contract performance. Further, this type of pricing structure allows CDP to minimize the risk that the agency will not need the total estimated quantity of copies.

We think these advantages could have enabled CDP to offer lower overall prices than it otherwise would have and thereby worked to the prejudice of the other bidders that did not deviate from the single unit pricing scheme of the IFB schedule. In particular, we note that Monroe's bid was low for the base year and became second low to CDP during the first option year. Because Monroe was extremely competitive for the base year without having had the same pricing advantage as CDP, we cannot say that the overall relative standing of the CDP and Monroe bids was not affected by the deviation in CDP's bid. Thus, under these

circumstances, we agree with the agency's view that acceptance of CDP's bid would have been prejudicial to the other bidders. Therefore, we conclude that the agency properly rejected CDP's bid as nonresponsive.

The protest is denied.


James F. Hinchman
General Counsel