



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Trio Graphics, Inc.

File: B-253471

Date: August 27, 1993

Thomas J. Benedetti, Esq., for the protester.
Kerry L. Miller, Esq., Government Printing Office, for the agency.
David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where the protester's bid failed to mention the 5,000 additional mailing envelopes and sample sets required by the solicitation specifications, the bid was properly rejected as nonresponsive since it did not obligate the bidder to provide those envelopes; the nonresponsiveness of a bid may not be cured by a blanket statement that the bid is in conformance with the specifications, by the de minimis nature of the mistake where the item left from the bid is not divisible from the other requirements, or by monetary savings to the agency that would result from an award to the protester.

DECISION

Trio Graphics, Inc. protests the rejection of its bid under solicitation No. 710-202, issued by the Government Printing Office (GPO) for 60,000 United States Military Academy admissions brochure sets plus 50 samples sets and 5,000 additional mailing envelopes. Trio's bid was rejected as nonresponsive because it did not obligate Trio to provide the 5,000 additional mailing envelopes.

We deny the protest.

The solicitation, issued on April 16, 1993, required bids to be submitted by May 10. Bidders were required to submit a price for the printing and distribution of 60,000 admissions brochure sets, plus 50 samples (each set was to include a 32 plus-page brochure, a business reply envelope, and a

mailing envelope) and 5,000 additional mailing envelopes. Bidders submitted their bids on GPO Bid Form 910, which included a large box for the insertion by a bidder of the item(s) and price(s) it was offering. Trio submitted a price of \$68,000 for a quantity of "60,000" "admissions prospective brochure, business reply envelope, and mailing envelope." Its bid made no mention of the required 5,000 additional mailing envelopes or additional sample sets. Because of this, the contracting officer determined that Trio had qualified its bid by not offering the 5,000 envelopes and rejected it as nonresponsive. The GPO Contract Review Board agreed with this determination, and award was made to the next low bidder at a price of \$68,965.

Trio argues that its failure to list the 5,000 additional envelopes as part of its \$68,000 price for the 60,000 piece job is merely an immaterial deviation from the bid requirements and should not preclude it from receiving award. First, Trio argues that its work sheets show that the cost of the 5,000 envelopes was included in its price. In any event, the work sheets also show that the cost for these envelopes, slightly over \$500, is so insignificant that even if it had not been included in the bid price, it could not be considered to affect bid responsiveness. Second, Trio contends that since GPO Form 910 did not set forth items which the bidder was required to price and since it read that "All bids are subject to . . . the specifications . . . which are enclosed or incorporated herein by reference, Trio's price of \$68,000 should be considered to have included the cost of the 5,000 envelopes in conformance with the specifications. Finally, Trio argues that it has bid similarly in the past, has received the awards, and should also, consistent with prior agency conduct, receive award here. It notes the monetary savings to the agency that would result from an award to itself in this case.

In order for a bid to be responsive, it must constitute an unequivocal offer to provide the exact items or services called for in the IFB so that government acceptance of the bid will legally bind the bidder to perform the contract in accordance with all the material terms and conditions. GTA Containers, Inc., B-249327, Nov. 3, 1992, 92-2 CPD ¶ 321. As a general rule, a bid must be rejected as nonresponsive if, as submitted, it does not include a price for every item requested by the IFB. This rule reflects the legal principle that a bidder who has failed to submit a price for an item generally cannot be said to be obligated to furnish that item. Kirkland Sales, Inc., B-249090, Oct. 23, 1992, 92-2 CPD ¶ 278. Bid responsiveness is to be determined at bid opening, and a nonresponsive bid cannot be made responsive by subsequent events. GTA Containers, Inc., supra. To allow a bidder to make its nonresponsive bid

responsive after bid opening would be tantamount to allowing the bidder to submit a new bid and may not be permitted. Trail Equip. Co., B-241004.2, Feb. 1, 1991, 91-1 CPD ¶ 102. A blanket promise of compliance with the specifications of a solicitation is not enough to establish the responsiveness of a bid which does not demonstrate compliance affirmatively apart from the blanket promise. Id.

We conclude that Trio's bid was properly rejected as nonresponsive. Trio specifically listed and priced the 60,000 brochures (and their components), but failed to mention and price the 5,000 additional mailing envelopes, or the 50 samples, or to state that these were covered in the \$68,000 price it did submit. Thus, on its face the bid submitted by Trio did not obligate Trio to provide the agency with the required 5,000 envelopes or the 50 sample sets. The preprinted statement on Form 910 that the bid as submitted was in conformance with the specifications is not sufficient to establish Trio's commitment to furnish the additional envelopes or sets in light of its specific statement in its bid that it was offering "60,000" brochure sets. See Hagglunds Prinoth, B-238244, Apr. 12, 1990, 90-1 CPD ¶ 385. Thus, the bid properly was viewed as nonresponsive. Further, the work sheets submitted by Trio to establish that it intended to include the additional quantities are immaterial since a bid cannot be corrected under mistake in bid rules in order to make it responsive. See Federal Acquisition Regulation § 14.406-3; Kirkland Sales, Inc., supra.

Although a bid which fails to price every item requested by the IFB may nevertheless be responsive where (1) the bid itself reveals a consistent pattern of pricing indicating the intended price or (2) the priced item is divisible from the solicitation requirements, is de minimis as to total cost, and is irrelevant to the competitive standing among bidders, see Upside Down Prods., B-243308, July 17, 1991, 91-2 CPD ¶ 66; GTA Containers, Inc., supra, neither exception applies here. With only one price to be bid, no pattern of pricing can exist. There is nothing to show that the 5,000 envelopes are divisible from the contract--logic can only lead to the conclusion that they are not. These envelopes are apparently needed in the event mistakes are made in addressing the envelopes provided in the original package and, according to the specifications, must be manufactured during the same run to ensure uniformity.

Finally, the fact that Trio may have bid similarly on past procurements and may have received awards under these solicitations is not relevant in this case, since each procurement is a separate transaction and agency action under one procurement does not affect the propriety of the

agency's action under a different procurement. Pearl Properties, B-249524, Nov. 17, 1992, 92-2 CPD ¶ 355. Further, the fact that Trio's nonresponsive bid would result in monetary savings to the agency is irrelevant since acceptance of a nonresponsive bid would compromise the integrity of the sealed bidding system and is, therefore, not permissible. Trail Equip. Co., supra.

The protest is denied.

Ronald Berger
for James F. Hinchman
General Counsel