



Comptroller General
of the United States

858128

Washington, D.C. 20548

Decision

Matter of: Commercial Data Center, Inc.

File: B-256894

Date: August 8, 1994

Frederic G. Antoun, Jr., Esq., for the protester.
Kerry L. Miller, Esq., Government Printing Office, for the agency.
Christine F. Davis, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

While the Government Printing Office improperly allowed a bidder to correct an allegedly mistaken price in its bid without requiring evidence of the intended price, this impropriety did not result in competitive prejudice as the alleged error occurred on a line item of work that was only requested for contract administration purposes and was not to be evaluated in determining the low bidder under the solicitation, and the bid was responsive since it contained a price for the line item.

DECISION

Commercial Data Center, Inc. (CDC) protests the award of a contract to Direct Marketing Associates, Inc. (DMA) under invitation for bids (IFB) No. 345-495, issued by the Government Printing Office (GPO), for the printing and assembly of Employer's Quarterly Federal Tax Return Packages for the Internal Revenue Service. CDC challenges DMA's bid correction after bid opening.

We deny the protest.

The IFB sought 5,905,502 assembled copies of the tax package. Each package consists of a Form A and a Form B, an Insert A and an Insert B, an instructions manual, a mailing envelope, and a return envelope. The contractor was responsible for printing all the required documents and envelopes, enclosing the documents and return envelope into the mailing envelope, and submitting the assembled tax packages to the U.S. Postal Service for mailing.

The total quantity of tax packages required under the IFB was divided into two lots for bidding purposes. Lot 1 was for 2,789,924 tax packages, and Lot 2 was for 3,115,578 tax packages. The IFB pricing schedule contained a line item for Lot 1, for Lot 2, and for the entire quantity (the "lump sum"); bidders could choose to price any or all of the three line items. The IFB provided for a single or split award, depending upon which bid or combination of bids resulted in the lowest total cost to the government for the total requirement encompassed by Lots 1 and 2.

The IFB contained a variable quantities clause, which allowed the government to increase or reduce the total quantity ordered under the resultant contract by 15 percent. Similarly, the IFB contained a clause allowing the government to make changes in the construction of the tax package, which "could involve the elimination of Inserts A and/or B." The IFB advised that billing adjustments for any change in quantity or construction would be at the contractor's "additional rate." The IFB pricing schedule contained line items for eleven additional rates, representing the individual work elements that went into the construction of the tax package, such as printing and folding Form A; printing and folding Form B; and enclosing one insert into a mailer envelope. The IFB required bidders to enter either a price or a "no charge" designation for each of the requested additional rates,¹ but did not provide for the evaluation of these rates in determining the low bidder, which depended exclusively on the prices for the basic requirement encompassed by Lots 1 and 2.

The agency received eight bids at the March 14 bid opening. The lowest cost to the government for the total requirement was a combination of DMA's bid for Lot 1 (\$409,254) and another firm's bid for Lot 2 (\$462,712), totaling \$871,966. The next lowest cost for the total requirement was the protester's lump-sum bid of \$874,800. In accordance with the IFB'S evaluation scheme, the GPO prepared multiple awards to DMA and the other bidder.

On March 16, before award, DMA requested the contracting officer's permission to correct an allegedly mistaken "additional rate" in its bid. Specifically, DMA priced two "additional rate" line items (for enclosing one insert into a mailer envelope, and for enclosing forms, instructions,

¹The IFB explained that a "no charge" designation meant that the contractor would not charge the government for ordering increased quantities. Conversely, a "no charge" designation meant that the government would not be entitled to reduce the contract price for reduction or elimination of contract work.

and return envelope into a mailer envelope) at \$12.60 each. DMA asserted that it had intended to provide both line items for \$12.60, and requested that it be allowed to enter a bid of "no charge" for one of the two line items, *i.e.*, enclosing one insert into a mailer envelope. DMA provided no evidence, such as bid workpapers, to support its request for bid correction. The contracting officer granted this request and, on March 18, awarded DMA the contract for Lot 1 based upon its bid price of \$409,254.

CDC protests DMA's bid correction, arguing that the awardee has not submitted clear and convincing evidence to establish its intended price. The protester contends that the contracting officer may only permit withdrawal, but not correction, of DMA's bid under such circumstances, in which case CDC would be in line for award.²

We agree with the protester that DMA failed to provide clear and convincing evidence of its intended additional rate line item prices and that the GPO disregarded its regulations by apparently accepting DMA's mere allegation that it meant to bid "no charge," rather than \$12.60, for that line item. However, even though GPO should not have allowed DMA to correct its bid without satisfying the applicable evidentiary requirements, we find that this impropriety was of no consequence in this case because DMA's bid is responsive and the bid correction did not result in competitive prejudice to the protester or the competitive procurement system.

The IFB provided that only the bid prices for Lots 1 and 2 and for the lump sum would be evaluated for the purposes of making award. Bidders were informed that the additional rate line item prices would not be evaluated for award.

²GPO, as a legislative branch agency, is not subject to the Federal Acquisition Regulation (FAR), but follows its own Printing Procurement Regulations in conducting its procurements. See Custom Printing Co., 67 Comp. Gen. 363 (1988), 88-1 CPD ¶ 318. However, the GPO provisions which govern the correction of pre-award mistakes are virtually identical to the FAR rules. As with the FAR, see FAR § 14.406-3, the GPO regulations generally provide that the contracting officer may grant a bidder's pre-award request to correct a mistaken bid where "clear and convincing evidence establishes both the existence of the mistake and the bid actually intended," or the contracting officer may allow the bidder to withdraw the bid, where the evidence at least reasonably supports the existence of a mistake, but is not clear and convincing as to the intended bid price. See Printing Procurement Regulation, GPO Publication 305.3 (Rev. 11-92), Chapter XI, section 6(3).

Rather, these additional rate line item prices were only requested for contract administration purposes, that is, to fix the amount by which a contract price would be increased or decreased to account for changes in the construction or quantity of packages ordered.³ Contrary to the protester's argument, the responsiveness of DMA's bid is not affected by the subsequent mistaken rate claim. DMA's bid included prices for each required line item of work and, thus, legally obligated DMA to perform the services required by those line items. See American Spare Parts, Inc., B-224745, Jan. 2, 1987, 87-1 CPD ¶ 4. Moreover, since these line item prices were not to be evaluated, the fact that the agency allowed an unsubstantiated correction to one of DMA's additional rate prices did not alter DMA's evaluated price for award purposes or affect the relative standing of the bidders. Accordingly, no prejudice resulted from the impropriety which would cause us to sustain the protest. See NJS Dev. Corp., 67 Comp. Gen. 529 (1988), 88-2 CPD ¶ 62; Zimmerman Plumbing and Heating Co., Inc.--Recon., B-211879.2, Aug. 8, 1983, 83-2 CPD ¶ 182.

The protest is denied.

/s/ James A. Spangenberg
for Robert P. Murphy
Acting General Counsel

³CDC did not protest that the additional rate line item prices should be evaluated, and, in any event, such a protest was required to be filed before bid opening.

⁴ C.F.R. § 21.2(a)(1) (1994).