



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-226514

April 3, 1987

The Honorable Jesse Helms
United States Senate

Dear Senator Helms:

This responds to your inquiry of February 23, 1987, on behalf of Carolina Library Services, Inc. (CLS), concerning the rejection of the firm's bid under Department of Health and Human Services invitation for bids No. 87-24. The procurement was to provide photocopying services for the Centers for Disease Control, Atlanta, Georgia.

CLS complains that its bid was improperly rejected and the contract awarded to a higher-priced firm. The basis for this complaint is CLS's apparent belief that the contracting officer, in evaluating the bids, misread CLS's offer of alternate methods for placing orders as an exception taken by the firm to a material requirement of the solicitation.

In this regard, the solicitation provided as part of the contract requirements that the contractor was to furnish personal pick-up of documents. However, in the section of its bid setting forth its unit price for document photocopying requests, CLS appended a footnote which stated:

"Orders can be placed with CLS over DIALORDER, SDC Electronic Maildrop, MCI Mail, CLASS ONTYME, by mail or phone."

This matter was not considered under our bid protest procedures because CLS's submission is untimely. 4 C.F.R. § 21.2(a)(2) (1986). Therefore, we have not requested a full administrative report from the agency. However, we have contacted the contracting officer for the procurement who confirms that she viewed this footnote as creating a material ambiguity regarding CLS's intent to furnish in-person document pick-up as required by the solicitation.

The contracting officer also relates that CLS, by submitting its own retyped version of the "Item Description" page of the agency's solicitation, took explicit exception to certain

performance requirements. For example, although the government's delivery schedule clearly called for the return of photocopies of documents "available within a 100 mile radius of downtown Atlanta" on the workday following pick-up by the contractor, CLS expressly stated in its bid that such return would be for "document photocopies available within a 100 mile radius of downtown Chapel Hill, NC. . . ." Moreover, the government required the return of photocopies of documents available outside the Atlanta area on the fifth workday following pickup, but CLS specifically provided in its bid that such return would be "within 10 days following receipt" of the documents.

A bid under a sealed bid procurement must represent an unqualified offer to comply exactly with the material terms and conditions of the solicitation; in other words, the bid must be "responsive." Since the sealed bidding rules prohibit a bidder from explaining what was intended by its bid after bids have been opened, a bid, to be responsive, must not contain anything which takes, or appears to take, exception to the material requirements of the solicitation. If the contracting officer reasonably determines that the bid is so conditioned, the bid shall be rejected. Federal Acquisition Regulation, 48 C.F.R. § 14.404-2(a) (1986).

Accordingly, from the record presented to us and the statements of the contracting officer, we conclude that CLS's bid was properly rejected as nonresponsive consistent with the governing provisions of the Federal Acquisition Regulation. We trust this information will be helpful to you in responding to your constituent with a view toward future sealed bid procurements.

The correspondence in this matter is returned per your request.

Sincerely yours,

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel

Enclosure