

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

60194

FILE: B-184750

DATE: November 20, 1975

MATTER OF: Webcraft Packaging, Division of
Beatrice Foods Co.

97704

DIGEST:

1. Low bidder who submitted bid offering alternate method of constructing income tax form from single web of paper after 8 months of discussions with user agency (IRS), believing incorrectly that requirements of specifications requiring two types of paper, one type for vouchers and one type for envelopes, had been waived is nonresponsive since bid did not meet paper requirements of invitation. Since quality of product to be furnished was affected by alternative construction, agency properly rejected bid as nonresponsive.
2. Protest alleging ambiguity in specifications, filed after bid opening, is untimely under section 20.2(b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), which requires that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening must be filed prior to bid opening.
3. Contracting officer is under no duty to request verification of bid which is nonresponsive and in which there is no evidence of error since verification is required only when the contracting officer has reason to believe that bidder has made mistake in bid but not to make nonresponsive bid responsive.

This is a protest by Webcraft Packaging, Division of Beatrice Foods Co. (Webcraft), against the award of a contract to Moore Business Forms, Inc. (Moore), under invitation for bids (IFB) No. 575-062, issued by the Government Printing Office (GPO) for the printing and binding of 1976 Declaration of Estimated Tax for Individuals Form 1040-ES.

Bids were opened on July 24, 1975, with two bidders responding to the IFB. Moore submitted a bid in the amount of \$575,140 and Webcraft's bid was in the amount of \$546,565. Webcraft's bid was rejected after it was determined to be nonresponsive because it failed to meet the requirements as specified in the IFB. The construction sample submitted with Webcraft's bid did not utilize the envelope paper as required by the IFB.

Section 8 of the IFB provided for alternate bids but subject to the following conditions:

"Section 8 - Alternate Bids

"8.1 Paper: In the event the bidder cannot furnish any of the paper specified by the Government, he may submit an alternate bid specifying the kind and weight of paper he will furnish, provided that such alternate paper is suitable for the intended use of the end product in respect to weight, opacity, thickness and writing quality.
* * *

"Award will be made to the low responsive, responsible bidder whose bid takes no exception to the Government specified paper options. Alternate bids will only be considered for award in the event no bids are received which offer to furnish the paper specified by the Government." (Emphasis supplied.)

Since Moore did not take any exceptions to the paper specifications, the contract was awarded to it as the low responsive, responsible bidder on July 31, 1975.

Webcraft contends that it had discussions with the user agency, the Internal Revenue Service (IRS), for an extended period of time prior to bid opening. The content of these discussions was to allow Webcraft to bid on a one-part form rather than four-part form which had been used previously. A one-part form uses only one web or one grade of paper. As a result of these discussions Webcraft submitted proposed changes to the 1040-ES specifications to IRS. However, the proposed changes did not appear in the specifications when the IFB was sent to prospective bidders by GPO.

Counsel for Webcraft contends that GPO erred when it determined the Webcraft bid to be an alternate bid. Section 3.2 of the specifications is claimed to be ambiguous by Webcraft if a bidder proposed to furnish a one-part form since section 3.2.1 provides three paper options for parts one and two (vouchers) of the form: white bond, white writing, or white offset book, while section 3.2.2 provides that only white wove paper would be acceptable for parts three and four (envelopes) of the form. Therefore, counsel argues that regardless of which paper option Webcraft exercised

under section 3.2.1, section 3.2.2 could not be complied with because a one-part form can only be made from one grade of paper and white wove, the specified paper for parts three and four, was not a designated option for parts one and two. Webcraft understood that a bid which proposed to furnish a one-part form was responsive to the specifications and interpreted the alleged contradictory elements of the specifications as a waiver of the paper requirements pertaining to parts three and four.

It seems clear that since Webcraft submitted a bid on a proposed one-part form which was impossible to produce the way the specifications were designed and also submitted construction samples which were not consistent with the Government-specified paper options for parts three and four, the bid was properly considered as an alternate bid as defined in section 8 of the IFB.

From the record, it appears that the modifications and changes suggested by Webcraft to IRS were merely proposed. It does not appear that any of the proposed modifications and changes ever appeared in writing nor did they appear in the specifications. As stated in counsel's comments dated September 22, 1975, "It was with the firm understanding that its proposal was compliant with IRS's end needs and was responsive to GPO specifications, an understanding crystallized from a series of discussions with IRS encompassing approximately eight months, that Webcraft prepared its bid." (Emphasis supplied.) If the specifications had been amended to include the use of the paper proposed by Webcraft as a specified paper option for parts three and four, the bid would not have been considered an alternate and all bidders could have considered the use of that option. The paper proposed by Webcraft is a less costly grade of paper than that specified in the IFB and, therefore, it gained a competitive advantage over the bid submitted by Moore.

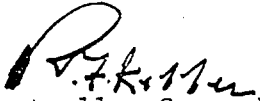
As a general rule, a bid is responsive if it complies with all material or essential provisions of the IFB. A deviation from the terms of the IFB is material or substantial if it affects price, quantity, quality, or delivery. Prestex, Inc. v. United States, 162 Ct. Cl. 620, 320 F.2d 367 (1963); 40 Comp. Gen. 432 (1961). The responsiveness or nonresponsiveness of a bid is for determination upon the basis of the terms of the invitation on which the bid is submitted. 41 Comp. Gen. 721 (1962). The bid submitted by Webcraft did not comply with a material requirement of the specifications. It merely assumed that a waiver of the paper requirements for parts three and four was allowable. This proved to be unfounded.

Specifically, Webcraft is nonresponsive because its alternate method of construction is produced from a single sheet of paper and, therefore, it cannot meet the requirements of the specifications in furnishing white wove paper for the envelopes while using white offset book paper for parts one and two as required in the specifications. This deviation is not immaterial as counsel would have us believe but it has a direct effect on the quality of the product to be furnished. Since Moore did not take exception to the specifications, the Webcraft bid could not have been considered for award under the terms of section 8 of the IFB.

Concerning counsel's contentions that the specifications are ambiguous because they make literal compliance with the Government-specified paper option impossible, it is the position of our Office that protests against the specifications in an IFB must be filed prior to bid opening. Section 20.2(b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides in pertinent part that "Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed prior to bid opening * * * ." Bids were opened on July 24, 1975, and Webcraft's protest to our Office was not received until August 18, 1975. Therefore, the protest that the specifications were ambiguous is untimely and will not be considered on its merits.

Finally, counsel argues that GPO failed to discharge its obligation under the Federal Procurement Regulations by not seeking to verify Webcraft's bid. This is clearly erroneous since Webcraft's bid did not contain an error. Verification is only required where there is an obvious error or when the contracting officer has reason to believe that a mistake may have been made. Under either of these circumstances he is required to request that the bidder verify his bid after calling attention to the suspected mistake. An allegation of error is proper for consideration only in cases where the bid is responsive to the invitation and is otherwise proper for acceptance. 40 Comp. Gen. 432 (1961). Since responsiveness is determined at bid opening, the contracting officer was under no obligation to contact Webcraft after bid opening concerning the responsiveness of its bid.

For the foregoing reasons, the protest is denied.


Deputy Comptroller General
of the United States