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DECISION



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

FILE: B-190490

DATE: March 24, 1978

MATTER OF: Wickham Contracting Co., Inc.

DIGEST:

1. Where bidder submitted lump-sum bid for modernization of Federal building as solicited in IFB, but failed to provide unit prices for lighting fixtures as solicited in IFB amendment, waiver of such failure was appropriate, because unit prices were not used in evaluation of bids.
2. Allegations of protester concerning possible changes in quantum of lighting fixtures after award to low bidder will not be considered by our Office since allegations involve contract administration and are not for resolution under bid protest procedures.
3. Record shows agency's explanation of need for award prior to resolution of protest was adequate and complied with applicable procurement regulations.

On September 2, 1977, the General Services Administration (GSA), Public Buildings Service, issued invitations for bids on project No. INJ-74100 involving the modernization of the Federal Building and U. S. Courthouse in Camden, New Jersey. Section 1605 of the IFB specifications required the furnishing and installation of a complete electrical system for power, lighting, and other services for the building. The opening date for bids was set at 1:30 p.m., on September 20, 1977.

GSA subsequently issued amendments Nos. 1, 2, and 3, modifying certain solicitation drawings and specifications as well as extending the opening date for bids. On October 4, 1977, GSA issued Amendment 4. Paragraph 7 of this amendment provided as follows:

"Contractor shall quote a unit price for lighting fixtures in place add and delete (both four bulb and 2 bulb fixtures are included). The unit prices shall be included with the bid submission."

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The amendment also extended the bid opening date until 1:30 p.m., October 18, 1977.

Ten bids were opened by GSA on the above date. Fluidics, Inc. (Fluidics), submitted the low bid in the amount of \$1,495,837. Wickham Contracting Co., Inc. (Wickham), submitted the second low bid of \$1,589,000. Fluidics, however, was the only bidder that did not submit unit prices for the adding or deleting of lighting fixtures if required during the performance of the awarded contract.

In a telegram received by us on October 20, 1977, Wickham filed a timely protest against any award to Fluidics. On November 11, 1977, we received a letter from Wickham providing additional details as to the basis of its protest.

Wickham contends that Fluidics' bid amounts to a material deviation from the solicitation bid requirements and, therefore, is nonresponsive and should be rejected. Wickham argues that the requirement to state unit prices for lighting fixtures cannot be waived by GSA. Any such waiver places Fluidics in the position of determining whatever price it desires for any contract additions or deletions of lighting fixtures, greatly prejudicing all other bidders who like Wickham did quote unit prices.

By letter dated November 11, 1977, GSA requested Fluidics to agree to an extension of its bid acceptance time from December 2, 1977, to January 18, 1978. Fluidics notified GSA on November 22, 1977, that because of rising prices it was unsure whether it could agree to such an extension. In light of the difference in amount between Fluidics' bid and Wickham's bid (\$93,163), GSA determined that prompt award would be beneficial to the Government. In accordance with section 1-2.407-3(b)(4) of the Federal Procurement Regulations (FPR) (1964 ed. amend. 68) award was made to Fluidics on December 7, 1977. As required by our Bid Protest Procedures, 4 C.F.R. § 20.4 (1977), GSA notified us on December 2, 1977, of its intent to make an award prior to the resolution of Wickham's protest.

In a letter to us dated January 25, 1978, Wickham, in addition to reiterating its argument as to why Fluidics' bid should be deemed nonresponsive, stated its objection to the decision to award a contract to Fluidics. Wickham

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contends that Fluidics created its nonresponsive bid and by the same token created the urgency for award. According to Wickham, this type of "urgency" cannot possibly be covered by FPR § 1-2.407-8(b)(4). Wickham further argues that GSA had made a "reward" to Fluidics for its error in not finding Fluidics nonresponsive. Thus, in Wickham's opinion, GSA has further compounded its error by the fact that it has refused to allow timely adjudication of the protest by making an award during its pendency.

Section 1-2.405 of the FPR provides for a waiver of any minor informality or irregularity in bid. This section defines such informality or irregularity as:

"* * * one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the invitation for bids, the correction or waiver of which would not be prejudicial to other bidders. The defect or variation in the bid is immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost of the supplies or services being procured."

Using the foregoing criteria from the FPR, GSA concluded that Fluidics' failure to include unit prices for lighting fixtures was a minor irregularity in bid and waivable. Furthermore, GSA states that in requesting these unit prices in the first place, the contracting officer intended that they would be used merely for "information."

On the record before us, we also conclude that the failure to include unit prices for lighting fixtures was a minor informality and thus covered by FPR § 1-2.405.

What constitutes a minor informality or irregularity in bid is dependent on the particular circumstances present in each case. Chemical Technology, Inc., B-179674, April 2, 1974, 74-1 CPD 160. Paragraph 5 of section 01100 of the

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solicitation specifically provided that one "lump sum" bid would be required for all the work called for. Furthermore, the IFB did not identify any factor other than price that would be used to determine which bidder should receive the award. More specifically, no method of evaluation was specified in amendment No. 4 regarding how the unit prices for lighting fixtures would be taken into account in making an award. Consequently, the sole basis upon which all bids under the procurement could have been evaluated and compared was the lump-sum bid price for all the work required. We have stated in analogous situations that where an aggregate total price is invited by the solicitation, individual item prices are not material to the evaluation of bids so that any failure to quote individual item prices should be waivable. See Nelson Electric, Division of Sola Basic Industries, B-180393, April 10, 1974, 74-1 CPD 185; B-161012, June 13, 1967.


Wickham's arguments that Fluidics' failure to provide unit prices prejudices other bidders revolve around the contention that Fluidics will be in the position to negotiate any price it desires should the Government decide to either add or delete lighting fixtures. GSA argues that it is pure speculation whether there will or will not be any future changes in the quantum of lighting fixtures. There may be no change whatsoever. In any event, GSA contends that all bidders in the procurement were competing for award on the same basis; that is, on the basis of a lump-sum price for the quantum of work and materials required by the solicitation specifications as they existed prior to award.

The record indicates that the quantum of lighting fixtures was not changed prior to award. We believe, then, that GSA is correct in concluding that all bidders were competing equally, on the basis of a lump-sum bid. With respect to any changes in the quantum of contract lighting fixtures after award, this is a matter of contract administration and as such is not cognizable under our Bid Protest Procedures. See SMI (Watertown), Inc., B-188174, February 8, 1977, 77-1 CPD 98. However, Fluidics will not be able to charge any price it wants for any changes in the number of light fixtures. Under the Changes and Disputes clauses of the contract, the contracting officer will decide the price where an agreement cannot be reached.

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Finally, we cannot agree with Wickham that GSA's explanation of the need for an immediate award to Fluidics was inadequate or failed to comply with FPR § 1-2.407-8(b) (4). Subsection (b)(4)(iii) permits award prior to resolution of a protest when otherwise advantageous to the Government. We are unable then to dispute that, given the \$93,163 difference between bids and the fact that rising prices prevented Fluidics from being able to extend its bid acceptance time, the decision to make a prompt award was other than advantageous to the Government.

Accordingly, Wickham's protest is denied.


Deputy Comptroller General
of the United States