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DECISION



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

FILE: B-204455.2

DATE: March 1, 1982

MATTER OF: Vanguard Industrial Corporation--
Reconsideration

DIGEST:

A bid that failed to price three first article-related requirements as mandated by the IFB properly was rejected, since the Government's acceptance of the bid would not legally obligate the firm to meet those requirements.

Vanguard Industrial Corporation requests that we reconsider our decision B-204455, January 6, 1982, 82-1 CPD _____, that denied the firm's protest against the rejection of its bid as nonresponsive under invitation for bids (IFB) DAAR07-81-B-1088, issued by the Department of the Army for night vision sight cases. We affirm our decision.

The IFB required that a bidder enter either a price, "N" if not applicable, or "NSP" if not separately priced, in the space provided for each of four first article-related items: the first article itself, a first article test plan, testing, and a test report. Bidders were cautioned that the failure to follow this instruction would render a bid nonresponsive. Vanguard bid \$714 to furnish the first article, but left the other three spaces blank, and the bid therefore was rejected.

Vanguard asserted that simply by inserting a price to furnish the first article item and by signing the bid, the firm committed itself to all first article-related requirements. Vanguard also complained that it did not price the test plan, testing, and test report according to oral instructions from an unidentified individual at the contracting activity.

We denied the protest because we could not conclude that the Government's acceptance of a bid that priced only the first article unit itself would legally

obligate the contractor to furnish a first article test plan, perform the testing, and furnish a test report all for the price of the first article unit. We pointed out that there was nothing else in the bidding documents that expressed a clear and unequivocal agreement to do more than supply the first article item. Nonetheless, we did recommend to the Secretary of the Army that the agency either solicit a single bid price for all the first article-related requirements, or include a clause in its solicitations providing that if only the first article is priced the contractor will be committed to the related requirements at no additional cost to the Government. Also, because the Army contracting personnel denied having orally instructed Vanguard on how to prepare its bid, we found that the firm failed to meet its burden of proof in that respect.

In requesting reconsideration, Vanguard suggests that because the IFB clearly required a contractor subject to the first article requirement to furnish a plan, test the article, and submit a report, a bidder signing the bid committed itself to meeting all those requirements. On that basis, Vanguard argues that the bidding documents, when signed by the bidder, in fact express the bidder's clear and unequivocal agreement to do more than furnish the first article itself. We do not agree.

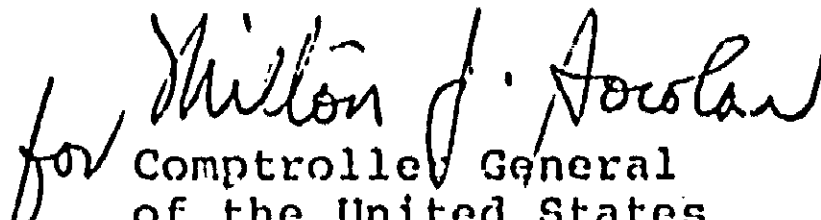
The ordinary rules of offer and acceptance provide the foundation for Government contract formation procedures. Thus, an IFB is a request for an offer, the bid is the offer, and the Government's award is the acceptance. To be responsive, the offer must, among other things, promise to deliver exactly what was called for in the IFB. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322. Where a bidder does not enter a bid price on an item for which a price is expressly requested, there is no offer for the Government to accept and thereby legally bind the firm to furnish the item. See 52 Comp. Gen. 604, 607 (1973). (This case also recognized the narrow exception to the rule that a failure to price an item may not be corrected to make the bid responsive, as we permitted correction of an obvious omission which was evident by a pattern of uniform pricing established in the bid documents for the same item.) It is not relevant that the firm may have intended, by signing the bid, to furnish the item not bid, since the bid itself must evidence the bidder's offer expressly, so that acceptance will legally obligate the bidder to furnish the item. See G.E. Webb, B-204436, September 21, 1981, 81-2 CPD 234.

The Army's invitation expressly required a price for each first article-related requirement in issue. Vanguard offered a first article for \$714. The IFB also required that the bidder enter a price to prepare a test plan, test the article, and report the results. Since Vanguard did not price those first article-related requirements, the Government's acceptance of the firm's bid would not legally obligate Vanguard to meet them. Therefore, Vanguard's failure in that respect rendered the bid nonresponsive. 52 Comp. Gen., supra.

Vanguard also reiterates its contention that it was orally instructed to prepare its bid as it did. The only evidence on this matter, however, is Vanguard's telephone bill which shows that the firm made a series of telephone calls to the contracting activity, and which Vanguard furnished with its protest. As we stated in our prior decision, in view of the Army's denial that Vanguard was instructed as alleged, the firm has not met its burden of proof.

In any event, even if we accept Vanguard's assertion as to the substance of the telephone conversations, the IFB expressly mandated an entry--a price, "N," or "NSP"--for each of the four first article-related items, and warned that a failure to follow that instruction would render the bid nonresponsive. The IFB also cautioned that oral explanations or instructions will not be binding. Under the circumstances, we think it unreasonable for Vanguard, in preparing its bid, to have relied on oral advice that was in direct conflict with the explicit instruction in the solicitation. See Neshaminy Valley Information Processing, Inc., B-194286.2, September 14, 1979, 79-2 CPD 199.

We affirm our prior decision.

for 
Comptroller General
of the United States