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Pl-1
Wetherston

DECISION



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

FILE: B-196071

DATE: March 13, 1980

MATTER OF: Fluke Trendar Corporation

DLG-04099

DLG-00196

DIGEST:

AGC00030

1. Bid must be rejected as nonresponsive when standard commercial terms and conditions varying material provisions of solicitation are incorporated in bid.
2. Extra listing in bid of total of sub-items may be deleted after bid opening as redundancy where extra listing was in extra space after sub-items were listed, which was inadvertently placed there by agency.
3. Discrepancy between amount bid as total of sub-items and sum of unit prices for those sub-items may be resolved after bid opening and award made on basis of lower price, if bid is lowest acceptable bid based on either possible price and bidder agrees to lower price, since other bidders are not prejudiced.

[Protest Against

The Fluke Trendar Corporation (Fluke) has protested the proposed ^{contract} award of a contract for electronic test equipment to Data Test, Inc. (Data Test), under invitation for bids (IFB) LGM-9-7346, issued by the Federal Aviation Administration (FAA).

Fluke initially protested, prior to bid opening, that the IFB might be interpreted after bid opening in a "restrictive" manner that could lead to the rejection of its bid. When bids were opened, Fluke's low bid was rejected as nonresponsive for reasons unrelated to its initial protest. Fluke then filed a second protest disputing those reasons for rejection of its bid.

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For the reasons discussed below, we find that Fluke's bid was properly rejected as nonresponsive. Since Fluke's bid was not rejected for the reasons raised in its initial protest, that issue is academic and will not be considered.

Fluke's bid was found to be nonresponsive, essentially, because two pages, entitled "Fluke Automated Systems, Inc. (Fluke) Terms and Conditions" and "Terms and Conditions - CE Services," were incorporated in Fluke's bid. The FAA states that this " * * * raise[d] an implication that Fluke intended to vary the terms and conditions of the solicitation."

Fluke argues that the FAA should have permitted it, pursuant to Federal Procurement Regulations (FPR) § 1-2.404-2(b)(5) (1964 ed. amend. 121), to delete the pages after bid opening as an objectionable condition not going to the substance of the bid. We disagree. The pages contained numerous clauses that varied material terms and conditions of the IFB, including delivery, payment, design change and liability limitation clauses. It is a basic principle of Federal procurement law that, to be considered for award, a bid must comply in all material respects with the IFB so that all bidders will stand on an equal footing and so that the integrity of the competitive bidding system will be maintained. 41 Comp. Gen. 721 (1962). We have held that bids containing standard commercial terms and conditions which deviate from material solicitation requirements must be rejected as nonresponsive. Searle CT Systems, B-191307, June 13, 1978, 78-1 CPD 433; Williamsburg Steel Products Company, B-185097, January 23, 1976, 76-1 CPD 40. To permit Fluke to delete the attached terms and conditions after bid opening would be contrary to the principle that bids may not be altered after bid opening to make them acceptable, 40 Comp. Gen. 432 (1961), and would subvert the competitive bidding system by giving a bidder "two bites at the apple." 38 Comp. Gen. 532 (1959).

In its comments on the agency report, Fluke raised several new issues. First, Fluke argues that the IFB was defective because it was issued

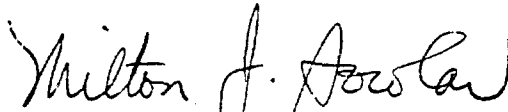
with a pricing column error. As Fluke recognizes, this issue is untimely because protests of apparent solicitation defects must be filed before the time for bid opening. 4 C.F.R. § 20.2(b)(1) (1979). Fluke argues that we should consider the issue, notwithstanding its untimeliness, because of its relevance to the allowability of solicitation mistakes in the future. We will not consider the issue, however, because it is not, in our opinion, a significant issue, nor has Fluke shown good cause for raising the issue late. 4 C.F.R. § 20.2(c) (1979). u1

Fluke also argues that Data Test's bid should have been rejected as nonresponsive because of "pricing errors." For item 4, the figure in the amount column for the total of sub-items 4A through D was \$58,414, while the sum of the listed unit prices for those sub-items was actually \$55,201. Also, Data Test's bid listed the total amount for sub-items 9.1 through 9.7 both at the beginning of the schedule listing for item 9, where it was explicitly requested, and after the sub-item listing for item 9, where the FAA had inadvertently placed an extra space in the amount column without a corresponding item number or description. The FAA deleted the extra listing of the total for item 9 as an obvious clerical error. The FAA recognized the discrepancy between the sum of the sub-item unit prices for item 4 and the total price listed and requested an explanation from Data Test. Data Test stated that the total price was in error and the correct price was the sum of the unit prices for the sub-items. *bid error corrected*

It is our opinion that the FAA's actions were reasonable and that Data Test's bid was responsive. The extra statement of the total of sub-items 9.1 through 9.7 was an obvious redundancy caused by the extra space inadvertently placed in the solicitation and it was not improper to delete it. As for the discrepancy between the total for item 4 and the sum of the unit prices, we have held that where such an ambiguity exists, the bid is the low acceptable bid under either view, and the bidder agrees to the lower price, a contract may

properly be awarded at that price, since the other bidders are not prejudiced and the integrity of the competitive bidding systems is not compromised. See, e.g. Sierra Engineering Company, 55 Comp. Gen. 1146 (1976), 76-1 CPD 342; B-145969, June 9, 1961; 39 Comp. Gen. 653 (1960). Since these conditions were all in existence here, the FAA acted properly.

The protest is denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States