

Lebowitz



Comptroller General
of the United States

104838

Washington, D.C. 20548

Decision

Matter of: R.R. Donnelley/Nimbus Joint Venture

File: B-261301

Date: August 3, 1995

Frederic G. Antoun, Jr., Esq., for the protester.
David Bercuson, Esq., for AstralTech Americas, Inc., an interested party.
Kerry L. Miller, Esq., United States Government Printing Office, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where the awardee's original bid was properly completed, the agency could accept the bid as responsive despite the fact that the awardee omitted two prices on copies of its bid and inserted two prices for a single line item.
2. Evidence of an agent's authority to sign a bid may be furnished after bid opening.

DECISION

R.R. Donnelley/Nimbus Joint Venture protests the issuance of a purchase order to AstralTech Americas, Inc., under solicitation No. A890-M, issued by the United States Government Printing Office (GPO) for the mastering and replication of compact disc--read only memory (CD-ROM) for various federal departments and agencies. The protester maintains that GPO should have rejected AstralTech's bid as nonresponsive.

We deny the protest.

The solicitation, which contemplated multiple awards, included line items for CD-ROM production; proofs; printing and binding; packing, labeling, and distribution; and premium payments. As relevant to this protest, for subline items II(a) and II(b), bidders were required to insert a

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unit price for each of two types of proofs, and for subline item IV(e), bidders were required to insert a unit price for "[j]ewel boxes (multiple discs) include shrink wrap per box." The IFB also required the "signature and title of [the] person authorized to sign [the] bid." The IFB required bidders to submit three copies of the price schedule, and the original and duplicate copies of GPO Form 910, captioned "BID."

AstralTech, the apparent low bidder (\$878,902), submitted an original GPO Form 910 with a price schedule attached. On that price schedule, AstralTech inserted prices in the space provided for each line/subline item. In addition, AstralTech submitted two originally completed copies of its price schedule. On these copies, AstralTech did not insert a price in the space provided for subline items II(a) and II(b) for two types of proofs. Further, for subline item IV(e), for "multiple" disc jewel boxes, on both the original price schedule and on the copies of the price schedule, AstralTech inserted the following in the space provided: "2 pack--\$.50; 3 pack--\$.57." Finally, AstralTech's bid was signed by "Janet Aberman--CD-ROM Specialist."

The protester, the apparent second low bidder (\$1,186,770), contends that GPO should have rejected AstralTech's bid as nonresponsive because the firm failed to include on the copies of its price schedule prices for subline items II(a) and II(b). The protester believes that AstralTech's bid is ambiguous because the firm priced these items in its original bid, but not in the copies of its bid.

A responsive bid unequivocally offers to provide the exact thing called for in the IFB, such that acceptance of the bid will bind the contractor to perform in accordance with all the IFB's material terms and conditions. See TECOM, Inc., 69 Comp. Gen. 441 (1990), 90-1 CPD ¶ 463. While all copies of a submitted bid should match the original, a bid is nonresponsive only where the deficiency makes the bid ambiguous so that the bidder is given an opportunity to select between two prices. Hughes & Hughes/KLH Constr., 68 Comp. Gen. 194 (1989), 89-1 CPD ¶ 61.

Here, GPO states that it evaluated AstralTech's prices as contained in the price schedule to which GPO Form 910 was attached. We think it was reasonable for GPO to treat that price schedule as the original, reflecting AstralTech's intended bid, given that GPO Form 910 to which the price schedule was attached was captioned "BID" with the notation "ORIGINAL." Since that price schedule contained prices for all line/subline items and clearly was intended as the original bid, the fact that the copies of the price schedule omitted two prices does not make the bid ambiguous. See id. Accordingly, we think AstralTech's bid was responsive.

The protester also contends that AstralTech qualified its bid for subline item IV(e), thus rendering its bid nonresponsive, because the firm inserted two prices for this item--a price for a quantity of two discs per jewel box and a price for a quantity of three discs per jewel box.

We do not think that AstralTech qualified its bid. AstralTech's pricing methodology for subline item IV(e) is consistent with a price for "multiple" discs per jewel box. The solicitation did not define the term "multiple" with respect to the quantity of discs required per jewel box. AstralTech provided specific information on what it considered to be "multiple" discs per jewel box, that is, a quantity of two or three discs, and a price for each quantity. In essence, AstralTech provided more specific pricing information than was contemplated by the IFB. We do not believe that this pricing methodology rendered AstralTech's bid nonresponsive.¹

Finally, the protester questions the authority of Janet Aberman to sign AstralTech's bid, dated March 27, 1995, thus binding the firm to the terms of the IFB. GPO, in initially evaluating AstralTech's bid, did not question Ms. Aberman's authority. The record shows that in response to this protest, GPO requested that AstralTech confirm that Ms. Aberman had authority to sign the firm's bid. In response, the vice president/chief operating officer of AstralTech, by letter dated May 9, 1995, stated that "Janet Aberman is fully authorized to negotiate and sign bids regarding the services we provide. This is an integral part of her job responsibilities and has been so since her employment with AstralTech Americas on March 21, 1994."²

¹We point out that in evaluating AstralTech's price, GPO used the higher price (\$.57) for the 3-pack jewel boxes, and AstralTech remained the significantly lower-priced bidder. Further, the record shows, and the protester agrees, that the total price for this item, \$285, represents a small percentage of the contract price, that is, less than 1 percent of AstralTech's total bid. See Fujitsu Imaging Sys. of Am., Inc., B-241733.2, Mar. 5, 1991, 91-1 CPD ¶ 243.

²We think this letter could be substituted for GPO Form 2524, captioned "Solicitation Mailing List Application," which is a form filed by GPO vendors notifying GPO of the persons authorized to sign bids, offers, and contracts. In commenting on this protest, AstralTech states that this form will be submitted to GPO, further establishing Ms. Aberman's authority.

Evidence of an agent's authority to sign a bid may be furnished after bid opening. FMS Corp., B-228201, Sept. 30, 1987, 87-2 CPD ¶ 318. The post-bid opening letter from AstralTech's vice president/chief operating officer confirmed Ms. Aberman's existing authority (for over a year prior to the submission of AstralTech's bid) to sign the bid on behalf of AstralTech, thus binding the firm to perform in accordance with the terms of the IFB.³ We have no basis to question the determination by GPO that Ms. Aberman had the authority to sign AstralTech's bid, thus binding the firm to the terms of the IFB.

On this record, we think that GPO properly accepted AstralTech's bid as responsive.

The protest is denied.

Christine S. Melody

for Robert P. Murphy
General Counsel

³The record also shows that Ms. Aberman signed the certificate of procurement integrity as the individual at AstralTech responsible for preparing the firm's bid. The protester does not contend that Ms. Aberman lacked authority to sign this document. Based on Ms. Aberman's signing of the bid and the certificate of procurement integrity on behalf of AstralTech, we think the bid documents are internally consistent, reflecting the fact that Ms. Aberman was authorized to sign AstralTech's bid and to bind AstralTech to the terms of the IFB.