



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Microform, Inc.; Government Printing
Office--Request for Reconsideration
File: B-231411.2; B-231411.3
Date: December 13, 1988

DIGEST

Prior decision sustaining a protest over the rejection of a bid for failure to acknowledge an amendment is affirmed where the record does not show that the amendment's substantial reduction in the annual estimated production quantity was material so that the failure to acknowledge the amendment was prejudicial to other bidders.

DECISION

Microform, Inc., and the Government Printing Office (GPO) request reconsideration of our decision in Automated Datatron, Inc., B-231411, Aug. 11, 1988, 88-2 CPD ¶ 137. That decision involved Automated Datatron, Inc.'s (ADI's) protest of GPO's rejection of its low bid under invitation for bids (IFB) No. B456-S. The solicitation was for duplicating government-furnished microfiche sets, collating, packaging and distribution; each of the items was separately priced. We affirm our prior decision but modify our recommendation for corrective action.

GPO rejected ADI's bid as nonresponsive because of the firm's failure to acknowledge amendment No. 1 to the IFB, which lowered the estimated quantity of microfiche to be produced by 25 percent. ADI's protest was sustained because we believed that the amendment imposed no additional obligations on the bidder other than those stated in the original invitation, and there was no evidence to show that the amendment would have had any impact on the firm's bid price. See Automated Datatron, Inc., B-231411, supra. The requests for reconsideration claim that our decision was based on errors of fact and law. Among other things, GPO claims that we were incorrect because our decision is based on the grounds that IFB No. B456-S was for an indefinite quantity contract rather than a requirements contract.

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While we agree that the solicitation was for a requirements contract, our earlier decision was not based on the assumption that the IFB called for an indefinite quantity contract. The decision was based on information contained in the solicitation in the form of an estimated range of weekly order levels, which taken together with a total absence of evidence on the record that the reduction in estimated quantities would have had more than a trivial effect on bid prices, led us to conclude that the failure to acknowledge the amendment could be waived. Automated Datatron, Inc., B-231411, supra.

The solicitation as originally issued contained a total estimated quantity of 48,000,000 microfiche for the 48-week period of the contract. Amendment No. 1 reduced the total estimated quantity to 36,000,000. It is GPO's position that the change in the estimated quantity from 48 to 36 million must be regarded as material. Moreover, Microform insists that the annual quantity estimate is the most important part of the solicitation.

We point out that the estimates in a requirements contract do not bind the government to place orders for any quantity of materials. The only obligation on the part of the government under the resulting contract is to purchase all of the items in the contract which the using activity requires. Thus the basic terms and conditions of the solicitation were not changed as a result of the revised estimate.

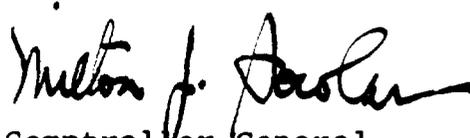
The issue here, then, is whether other bidders were prejudiced as a result of ADI's failure to acknowledge the amendment. See Native Plants, Inc., B-195481, Jan. 11, 1980, 80-1 CPD ¶ 35.1/ Our holding in Gibraltar Industries, B-218537.3, July 3, 1985, 85-2 CPD ¶ 24, is relevant in this respect. The solicitation in Gibraltar Industries allowed the bidders to bid on any part of the quantity estimated up to the maximum quantity of fragmentation vests expected to be ordered and bidders were warned that the government might award a lesser quantity than that advertised or bid upon. The amendment reduced the estimated maximum quantity of vests from 270,000 to 100,000. Since the bidder that failed to acknowledge the amendment bid on a range of 33,000 to 270,000, we found the failure to acknowledge the amendment to be properly waived, since the

1/ Based on our analysis of the facts the Native Plants decision concluded that the reduction in quantity was material and failure to acknowledge the amendment was prejudicial to other bidders.

reduction in the maximum estimated quantity imposed no additional legal obligation on the bidder. The GPO solicitation, on the other hand, did not give bidders the option of bidding on only a portion of the total annual estimated quantities required. Thus, bids were to be based on the total estimated annual needs of the government, and not on a portion of them. Nevertheless, the principle for which Gibraltar stands--that the bidders already have taken into account the economies of scale applicable to the production requirements--is the same for both cases.

Finally GPO has advised us that the estimate contained in the amendment was seriously in error; that in fact the actual needs of the government would be for no more than 6.48 million microfiche rather than the 36 million estimate contained in the amendment and the 48 million contained in the original solicitation. For that reason, the contract originally awarded was terminated for the convenience of the government and the requirement will be readvertised. In view of this advice we agree that the requirement should be readvertised. Our original recommendation that award be made to ADI is modified. We now find ADI entitled to be paid its bid preparation costs and its costs of filing and pursuing the protest in lieu of our original recommendation. ADI should submit its claim directly to GPO.

The decision is affirmed.

for 
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of the United States