

5539

DECISION



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

FILE: B-189409

DATE: February 27, 1978

MATTER OF: Armada, Inc.

DIGEST:

Despite change in solicitation instructions since prior GAO decision, bidder's failure to submit entire solicitation package does not render bid nonresponsive where portions of package submitted unambiguously incorporate by reference material terms and conditions of solicitation; failure to submit performance and financial data goes to responsibility of bidder rather than responsiveness of bid.

On November 24, 1976, the General Services Administration, Public Buildings Service, Region 3 (GSA), issued invitation for bids (IFB) 03C7071101 for a 1-year contract covering trash and debris removal services for various buildings located in the Arlington, Virginia, area. The bids were opened on January 28, 1977, and Armada, Inc., was the low bidder. On February 4, 1977, the second low bidder, Browning-Ferris Industries of Virginia, Inc. (Browning-Ferris), protested to GSA the potential award to Armada on the ground that Armada's bid was incomplete and non-responsive because it omitted certain material portions of the solicitation package. GSA allowed the protest and on June 17, 1977, informed the parties of its intent to award the contract to Browning-Ferris. Armada protested the proposed award to this Office on June 22, 1977.

The solicitation package included a GSA Form 1467 (the solicitation), a three-page Price Schedule, GSA Form 1467-A (Solicitation Instructions and Conditions), GSA Form 1468 (General Provisions), with

B-189409

addenda dealing with Clean Air and Water Certification, Employment of the Handicapped, Service Contract Act of 1965, Equal Opportunity Clause, and a 17-page Schedule of Requirements and Specifications. GSA Form 527, Contractor's Qualifications and Financial Information, was also included in the package. A Special Notice, requiring acknowledgment, was issued on December 10, 1976, postponing the bid opening from December 20, 1976, to January 28, 1977.

In response to the IFB, Armada returned only GSA Form 1467 (front and back), pages 1 and 2 of the Price Schedule, and the Special Notice, these being the only documents requiring fill-in.

The rule in a case where the bidder fails to return the entire solicitation package is that the bid must be submitted in such form that acceptance would create a valid and binding contract requiring the bidder to perform in accordance with all the material terms and conditions of the invitation. International Signal & Control Corp., et al., 55 Comp. Gen. 894 (1976), 76-1 CPD 180. We have elaborated upon this rule by requiring that in order to be found responsive a bid must unambiguously incorporate by reference all of the material terms and conditions of the invitation. See 49 Comp. Gen. 538 (1970); 49 Comp. Gen. 289 (1969).

Our decision in 49 Comp. Gen. 538, supra, a case that Armada urges on us as directly apposite to the present one, also involved a GSA procurement using Form 1467. We said there that use of the words "IN COMPLIANCE WITH the above" in conjunction with a listing of the documents making up the invitation package served to incorporate the entire package by reference, making bids responsive even though they omitted portions of the solicitation.

A review of Armada's submission convinces us that the present case falls within this rule. The GSA Form 1467 used here is substantially identical in relevant part to that in 49 Comp. Gen. 538, supra. It states that all offers are subject to: "1. The Schedule included below and/or attached. 2. The attached Solicitation, Instructions, Terms, and Conditions, GSA

B-189409

Form 1467-A. 3. The General Provisions, GSA Form 1468. 4. The Contract Requirements. 5. Such other provisions, terms, conditions, representations, certifications, specifications, and exhibits as are attached," and contains the words "IN COMPLIANCE WITH the above" in the signature block.

The case of International Signal & Control Corp., et al., supra, cited by both GSA and Browning-Ferris, is readily distinguishable from the present one. There the bidder included a cover letter that stated that its submission was "in complete response to subject solicitation," giving rise to uncertainty as to whether it intended to be bound by anything other than the documents submitted. No such ambiguity is created by Armada's bid here.

In its comments on the agency report, Browning-Ferris points to several portions of the solicitation package that it believes could not be incorporated by reference in the solicitation. For the reasons stated above, we reject this contention. We believe a reasonable construction of the solicitation incorporates all material terms and conditions of the IFB.

Browning-Ferris also refers us to the fact that GSA Form 1467-A was amended following our decisions in 49 Comp. Gen. 289, supra, and 49 Comp. Gen. 538, supra, specifically to require submission of the entire solicitation package with a bid. While this appears accurate, it is not dispositive of the case. We have consistently held that such a provision cannot render an otherwise responsive bid nonresponsive. See 45 Comp. Gen. 4 (1965).

The test, as stated above, is whether what is actually submitted would create a valid, binding contract obligating the bidder to perform in accordance with all of the material terms and conditions of the IFB. We believe this test is satisfied here. The facts in 42 Comp. Gen. 502 (1963), cited by Browning-Ferris, were distinguished in 49 Comp. Gen. 289, supra, on the basis that in the former case the bid form, as

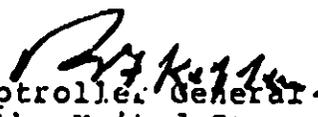
B-189409

opposed to the IFB, was made subject to certain provisions, some of which were omitted.

As both GSA and Armada have pointed out, omission of GSA Form 527, Contractor's Qualifications and Financial Information, goes to the bidder's responsibility, rather than to the responsiveness of the bid. 52 Comp. Gen. 389 (1972); 42 id. 464 (1963).

Under the circumstances, we believe that award should be made to the low bidder, Armada, Inc., if otherwise proper.

Accordingly, the protest is sustained.


Deputy Comptroller General
of the United States