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DECISION



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

FILE: B-205080 **DATE:** April 16, 1982
MATTER OF: The R.H. Pines Corporation

DIGEST:

Protest that proposed awardee's bid is ambiguous is denied. In spite of solicitation directions that import duty was not to be included in bid prices if certain duty-exempt countries were listed as sources for steel products, proposed awardee listed duty-exempt countries but affirmatively stated that prices included duty. Only reasonable interpretation of bid is that duty was included. Therefore, bid is not ambiguous.

The R.H. Pines Corporation (Pines) protests against the proposed award of a requirements contract for hot rolled, carbon steel plate to Glazer Steel Corporation (Glazer) by the Defense Industrial Supply Center (DISC) pursuant to solicitation No. DLA500-81-R-2679. The contracting activity proposes to award certain line items to Glazer as the lowest responsive, responsible bidder. Pines protests that Glazer's bid is ambiguous and, therefore, nonresponsive and should be rejected. Accordingly, Pines contends that it should receive the award as the lowest priced, responsive bidder.

The protest is denied.

The crux of the protest is that Glazer's bid is unclear concerning whether the prices bid on the protested line items included import duty. If the bid prices are interpreted to include import duty (which are to be deducted for evaluation purposes), then Glazer is the lowest bidder. However, if the bid prices are interpreted to exclude import duty, then the Pines' bid is lowest.

Glazer responded to clause K-10 of the solicitation by stating that the steel offered by it will be produced in the United Kingdom, France, Italy, and West Germany. The solicitation indicates in clause L-59, entitled "Notice of Potential Foreign Source Competition," that all four of these countries have been determined by the Secretary of Defense to be exempt from the restrictions of the Buy American Act (41 U.S.C. §§ 10a-d (1976)). Furthermore, the solicitation incorporates by reference clause L-61 of the DISC master solicitation, entitled "Offers of Item Produced or Manufactured by Certain Specified Foreign Sources," which directs bidders listing countries exempt from the Buy American Act; (1) not to include "any amount in [its] offered prices on account of duty for importation into the United States" and (2) not to complete clause K-6, entitled "Evaluation of Offers on Items of Foreign Origin."

Also, clause K-38 of the solicitation entitled "Certain Specified Foreign Sources Certificate," states:

** * * *

"2. The price(s) offered for items produced or manufactured in any of the countries listed in the clause entitled, 'Notice of Potential Foreign Source Competition' [clause L-59], does not/do not include any amount(s) on account of duty for importation of said item(s) into the United States or any of its possessions.

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In spite of clause L-61's directions to the contrary, Glazer filled out clause K-6, entitled "Evaluation of Offers on Items of Foreign Origin," which states in part:

"(This clause does not apply where items produced or manufactured by sources in any of the countries specified in the clause entitled 'Notice of Potential Foreign Source Competition' are offered. [clause L-59])

"a. Offerors offering other than domestic source end products, as defined in ASPR 7-104.3 Buy American Act, must include in the prices offered all applicable import duty and, for evaluation purposes, furnish the following for each item:

"Item No. Amount of Duty per Unit

(To be inserted by offeror in individual portion of solicitation)

* * * * *"

Under the heading "Item No." Glazer stated "ALL," and under the heading "Amount of Duty Per Unit" Glazer stated "Approx. .0131 Lb."

We have previously held that, if a bid is reasonably subject to more than one interpretation, only one of which makes the bid low, the bidder may not be allowed to explain the bid's meaning and thereby prejudice other bidders. Ed A. Wilson, Inc., B-188260, B-188322, August 2, 1977, 77-2 CPD 68. Thus, resolution of this matter turns on whether this bid was reasonably subject to more than one interpretation after a reading of the plain language of the bid. Maintenance, Incorporated, E-193148, February 12, 1979, 79-1 CPD 97.

It is clear that Glazer incorrectly completed the bid form. Glazer was not required to include import duty in its prices, because it was going to supply steel produced in countries which had been exempted from the Buy American Act. Glazer filled out clause K-6 and stated that its prices do include import duty. Even though Glazer did not follow the solicitation's directions not to include import duty, this does not affect Glazer's obligation to deliver the steel products or otherwise perform in total conformance with the solicitation's requirements if awarded the contract. Therefore, the failure to follow solicitation directions regarding import duty does not make Glazer's bid nonresponsive. See Northwest Ground Covers and Nursery, B-201609, February 9, 1981, 81-1 CPD 81; Compac-Cutting Machine Corp., B-195865, January 21, 1980, 80-1 CPD 60.

Moreover, while Glazer listed duty-exempt countries as the source for its steel in response to clause K-10, Glazer did not affirmatively indicate that its prices excluded import duty. The only affirmative statement concerning inclusion/exclusion of duty is contained in clause K-6 wherein Glazer filled in the blank spaces to show that all of its prices contained duty of approximately \$0.0131 per pound. In view of this, we conclude that the only reasonable interpretation of Glazer's bid is that Glazer intended to include duty in its prices. See Environmental Land Surveys, B-191765, July 6, 1978, 78-2 CPD 13.

A subsidiary issue raised by this protest is that the use of the word "approximate" renders the bid price ambiguous. We do not agree. Even though the stated duty was only approximate, the figure for amount of duty was carried out to four decimal places. We find reasonable the contracting agency's conclusion that only the last decimal place is subject to rounding and that the prices are, therefore, sufficiently definite for evaluation purposes.

In accord with the above reasoning, we conclude that Glazer's bid is not ambiguous and that award of a contract for these items may properly be made to Glazer. The protest is denied.

Milton A. Douglas
for Comptroller General
of the United States