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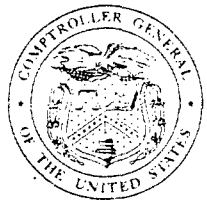
DECISION



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

FILE: B-196161 DATE: February 7, 1980

MATTER OF: F & H Manufacturing Corporation DLG02912

DIGEST:

1. Bid is responsive where intent to furnish item without charge is manifest even though bidder used symbol at variance with symbol specified in solicitation to express intent.

2. Where solicitation states that bidder's address on face page of solicitation will be used to indicate place of performance unless otherwise stated, bidder need not repeat address in other sections of solicitation.

3. Evidence of authority of agent to sign bid may be presented after bid opening.

F & H Manufacturing Corporation (F & H) protests the proposed award of a contract for telephone cable to Federal Standard Corporation (Federal) under DLG03822 solicitation No. DAAB07-79-B-0285, issued by the Department of the Army. Federal was the low bidder for the contract. F & H claims that Federal's bid should have been declared nonresponsive on three bases: first, F & H believes Federal did not obligate itself to furnish items 0003AB, 0004AB and 0005AA to the Government because it did not specify a price or state that there would be no charge for these items; second, Federal did not state in Section K.1 of its bid the place of final manufacture, packaging and packing of the telephone cable; and third, Federal did not have any authorization on file with the Army at the time of bid opening for the person who signed Federal's bid to bind the corporation to a contract. For the reasons stated below, the protest is denied.

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[Contract Award Protest]

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The protester's assertion that Federal failed to specify a price or express an intent not to charge the Government for items 0003AB, 0004AB and 0005AA is based on Federal's use of the symbol "N" in the price blocks for these items. It believes the language of the solicitation precludes the use of that symbol for that purpose. F & H points out that the footnote at the bottom of the bidding schedule notes that "N = Not applicable" and "NSP = Not separately priced." In addition paragraph C.83.1 of the solicitation provides that:

> "Each price block must be completed with an 'N' (not applicable), an 'NSP' (not separately priced) or a price. * * * DO NOT LEAVE UNIT PRICE OR TOTAL PRICE BLOCKS BLANK UNDER ANY CIRCUMSTANCES. Failure to follow this instruction will render the bid nonresponsive."

The Army believes the only reasonable interpretation of the letter "N" is that Federal did not intend to charge the Government for furnishing those items. In this respect the Army points out that items 0003AB and 0004AB were reports of first article tests required by the Government and that it would make no sense for Federal to complete those tests and then refuse to furnish the Army with a copy of the report. We agree.

We believe that where a bidder's intent to furnish an item to the Government without charge is manifest, it would be improper to reject the bid as nonresponsive even though the symbol used by the bidder to do so is at variance with the symbol listed in the solicitation for this purpose. See 40 Comp. Gen. 321 (1960). Here upon examination of the contract provisions related to the items in question, we are of the opinion that the use of the letter "N" instead of "NSP" conveys that intent. For example, IFB section L.55, entitled "First Article Approval - Contractor Testing- Alternate," requires the contractor to submit a first article test report to the contracting officer within 150 days after contract award. Further, that clause provides that the:

> "Contracting officer shall * * * within 30 days after receipt of such test report by the Government, approve, conditionally approve, or disapprove such first article."
>
> * * * * *
>
> "If the contractor fails to deliver any first article approval test report * * * or if the contracting officer disapproves any first article, the contractor shall be declared to have failed to make delivery within the meaning of the Default clause of this contract * * *" (emphasis added)

The import of the first article clause quoted above is clear in our view. First, the test report is a prerequisite to first article approval and thus contract performance. Second, a contractor's refusal to furnish the report to the Government places the contractor in jeopardy of default termination. We do not believe any contractor would knowingly place itself in such a position by refusal to deliver the first article test report. Thus in our view it is not reasonable to conclude that the bidder's use of the letter "N" in the price block was intended to indicate that such reports were "not applicable" under the circumstances. Further, since no specific dollar amount was indicated, we do not believe that "N" can be taken to mean anything other than the reports under items 0003AB and 0004AB would be furnished to the Government without additional charge, i.e., that price was "not applicable." Similarly, item 0005AA is also a report, and we believe it would be inconsistent for a bidder to attach a different meaning to the same symbol for this item. We find no merit to the protester's assertions in this regard.

With regard to F & H's claim that Federal did not state in paragraph 1 of section K.1 of its bid the place of final performance of the contract, we note that paragraph 2 of that section states that the contractor's address on the face page of the contract will be considered the location for performance unless otherwise stated in paragraph 1. There is therefore no requirement that this information be repeated in section K.1. By leaving paragraph 1 blank, Federal indicated that it intends to perform the work at the address on the face page of the contract.

With respect to the question relating to Mr. Knopps' authority to bind Federal to a contract, the record supports F & H's contention that there was no authorization on file with the procuring activity at the time of bid opening which authorized the party in question to sign bids on Federal's behalf and that no such authorization accompanied the bid. Nonetheless, the contracting officer reports that Federal "repeatedly confirmed by telephone Mr. Knopps' authority since the first inquiry by the contracting officer" and that by letter dated October 9, 1979, the company "certified" that authority to the contracting officer. However, since the October 9 letter was signed by a party not himself identified as an officer of the corporation the contracting officer sought further verification and by letter dated November 27, 1979, the company president again certified such authority. The latter letter indicated that Mr. Knopps was specifically delegated authority to "sign Government forms binding Federal * * * contractually," and that Mr. Knopps had such authority "since March 1, 1979." The November 27 letter also pointed out that Mr. Knopps had signed a number of previous bids from other procuring activities "which have resulted in contracts." No written proof of the agency relationship was furnished, and we understand that such relationship was in fact created by oral agreement. The contracting officer accepted the November 27 letter as sufficient proof of the authority in question. We believe the contracting officer's conclusion was reasonable.

As a preliminary matter, we point out that there is no prohibition against the furnishing of proof of an agent's authority after bid opening. Specrolab, a Division of Textron, Inc., B-180008, June 12, 1974, 74-1 CPD 321, and even self-serving declarations of authority presented before award have been considered sufficient evidence of an agent's actual authority. 50 Comp. Gen. 627 (1971). While an agency relationship created by oral agreement may be more difficult to establish, 49 Comp. Gen. 527 (1970), we believe that there was adequate evidence presented in this case. We think the events immediately following to the challenge to Mr. Knopps' authority (the telephone confirmations and the October 9 letter) can reasonably be taken as substantial evidence of that authority. This evidence, taken in conjunction with the November 27 certification and the agent's actual actions in binding the company on other Government contracts, would seem to us to be sufficient evidence of Mr. Knopps' authority. See, Jordan Contracting Company, et al., B-186836, September 16, 1976, 76-2 CPD 250.

The protest is denied.

FOR THE Comptroller General
of the United States