



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

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B-180043

December 28, 1973

Edgemont Construction Co.
P.O. Box 272
East St. Louis, Illinois 62202

Attention: Mr. Leonard Kaye

Gentlemen:

Reference is made to your letter of December 11, 1973, and prior correspondence, protesting against the proposed award of a contract to L. Wolf Construction Company under invitation for bids (IFB) No. DAAJ04-74-B-0004, issued by the Procurement Division, Headquarters and Installation Support Activity (AVSCOM), Department of the Army, Granite City, Illinois, Division.

The IFB requested bids for furnishing all labor and materials and for performing all work necessary for the renovation of Building 231, to be used as a new commissary at the Granite City Army Installation. The format of the bidding schedule listed four bidding groups to cover the Commissary Project, Parking Project, South Dock Project, and West Dock Project, respectively. The four groups covered 47 items of work and, in addition to quoting a unit price for each item, bidders were requested to quote a total bid price for all groups, items 1 through 47. On page 6 of the schedule, bidders were advised "BID PRICES MUST BE ENTERED FOR ALL ITEMS. BIDS SUBMITTED WITHOUT BID PRICES BEING ENTERED FOR ALL ITEMS WILL BE REJECTED."

Two bids were received and opened on October 30, 1973. The lowest total aggregate bid in the amount of \$1,312,851 was submitted by L. Wolf Construction Company. The only other aggregate total bid in the amount of \$1,378,000 was submitted by your firm. The contracting officer proposes to award a contract for all four projects to Wolf as the lowest responsible, responsive bidder.

You contend that the procuring activity should reject the bid of Wolf as nonresponsive because of its failure to show unit bid prices for all items. In view of this, you argue that the Government is not fully protected from a further claim by Wolf for additional costs and

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that acceptance of the Wolf bid would be prejudicial to the other bidders. And you maintain that your firm was deprived of bidding on an equal basis with Wolf; that you have bid in accordance with the bidding instructions whereas Wolf has set up for itself a desirable alternate. Thus, you state Wolf has gained an unfair advantage over your firm.

The record shows that Wolf entered lump-sum prices for all items in its bid except for items 3, 4, 5, and 25. In the blank spaces for inserting the lump-sum amounts for items 3, 4, 5, and 25, Wolf stated: "See item 40" for item 3, "See items 41 and 42" for 4, "See item 43" for item 5, and in the space for item 25, it inserted "Item 46 and 47." Since separate prices for items 3, 4, 5, and 25 were not stated in its bid, it is your contention that such failure rendered the Wolf bid nonresponsive.

The contracting officer has taken the position that, notwithstanding the failure of Wolf to show separate prices for four items, the bid binds the company to furnish all items at the aggregate total bid price in its bid, and therefore, the failure to price these four items separately is therefore immaterial.

It is well established that bids which do not conform to the requirements of a solicitation must be rejected as nonresponsive, unless the deviation is immaterial or is a matter of form rather than of substance. A deviation is considered material and is cause for rejection, if it affects price, quantity, or quality (B-175243, June 16, 1972). However, a requirement in a solicitation is not necessarily material simply because it is expressed in positive terms with a warning that failure to comply "may" or "will" result in rejection of the bid as nonresponsive. See 39 Comp. Gen. 595 (1960); 52 id. 265 (1972); B-176539, November 13, 1972. Also, see Armed Services Procurement Regulation 2-405.

We believe that the failure of Wolf to insert prices for items 3, 4, 5, and 25 in its bid was not a material deviation from the terms of the solicitation, since the bidder, by inserting in the spaces beside items 3, 4, 5, and 25, "See Items _____" and referencing items 40, 41, 42, 43, 46, and 47, which items covered work similar to that specified under items 3, 4, 5, and 25 would be obligated to perform the work covered by these items for the prices quoted for items 40, 41, 42, 43, 46, and 47. Also, since the contracting officer is contemplating awarding to Wolf a contract for all 47 items of work covered by all four projects, it is our opinion that for purposes of aggregate award, the total bid price for items 1 through 47 is controlling rather than Wolf's individual item prices. The primary project covers the

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construction of the commissary and consists of 39 items of work. It is true that if any of the other projects were deleted from the group of projects to be awarded, no award on the commissary project could be made to Wolf since prices for some items are included in prices for certain items of the other projects. However, since an award of all projects is contemplated by the contracting officer, we believe it would be proper to consider Wolf's bid as responsive for purposes of making an aggregate award.

Further, it appears that Wolf submitted an "all or none" bid. In regard to "all or none" bids, we have held that such a bid is responsive unless precluded by the invitation and that an "all or none" bid which is not precluded by an invitation must be considered if it offers the lowest aggregate price. See 42 Comp. Gen. 748 (1963). We have reviewed the provisions of the invitation and the consideration of an "all or none" bid is not precluded.

Also, you point to item 3 (outside utilities) of Wolf's bid on the commissary project where it inserted the notation, "See item 40," rather than a price. Item 40 is the earthwork, excavating, etc., for the parking project. You state that the foregoing notation does not fully bind Wolf to do the complete project and that the notation is at best ambiguous. You observe that different persons might reasonably interpret it differently, and that if such a notation were permissible, it should have been "Included in Item 40." We view the notation as meaning that the price for item 3 was included in the price for item 40. We do not believe that if Wolf is awarded all the work, it could deny the binding effect of its aggregate bid.

The protest is therefore denied.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States