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**DECISION**



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

FILE: B-194840 DATE: September 14, 1979

MATTER OF: *DLG O 2754*  
Phipps Products Corporation ✓

DIGEST: *[Protest of Bid Rejection as Nonresponsive]*

Qualification in bid reserving right to escalate contract price for "any increase" in contractor's established price at a higher rate of escalation than actually occurs, deviates from solicitation's ceiling on escalation and from the provision limiting that escalation to increases in contractor's established price. Bid which provided for escalation in price without a ceiling was properly rejected because it is not clear that bid would be low under all circumstances.

Phipps Products Corporation (Phipps) protests the rejection of its low bid as nonresponsive and the award of a contract to Ashland Chemical Company (Ashland), the only other bidder, on invitation for bids (IFB) DE-FB05-79-OR11042 for a requirements contract for acetone. ✓  
*DLG 62755*

Phipps' bid was rejected as nonresponsive because it included the following statement in its bidding schedule:

"\* \* \* Any increase or decrease in the posted [established] price will require an upward or downward adjustment of 102% of the amount of any such increase or decrease."

The solicitation included the following escalation clause:

*Bid Protests  
Bidder responsiveness  
Contract costs  
Proposal evaluation*

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"ARTICLE IV - ESCALATION:

"(a) The Contractor hereby warrants that the unit prices stated herein at the effective date hereof are not in excess of the Contractor's applicable established [posted] prices for like quantities of the supplies covered by this contract. \* \* \*

"(b) The contractor may at any time, or from time to time, during the performance of the contract request in writing an upward adjustment in any of the contract unit prices \* \* \* subject to the following conditions:

(1) No unit price shall be increased in accordance with subject request by a greater percentage than the applicable established price is increased.

(2) The aggregate of the increase in any unit price made under this paragraph shall not exceed 20 percent of the original applicable contract unit price."

DOE determined that the variation in Phipps' bid conflicted with the escalation provisions, since an increase at the rate of 102 percent would represent a greater rate of increase than permitted. It rejected Phipps' bid as nonresponsive.

Phipps argues that its deviation from the escalation provision provides no basis for rejecting an otherwise conforming bid that is substantially lower than the next low bid. Phipps refers to our decision in Keco Industries, Inc., 54 Comp. Gen. 967 (1975), 75-1 CPD 301, involving a multiyear procurement in which the bid deviated from the requirement that certain nonrecurring costs be priced separately and that like items be priced the same for each program year. Phipps claims that, as in Keco, the spread between

its low bid and Ashland's second low bid is so great that even if Ashland had bid in the same manner as Phipps, Ashland's bid would not have been lower. Phipps also states that, based on the IFB's estimated quantity of acetone required and the 20 percent maximum escalation allowed, its bid would remain low, regardless of any increases in its established prices.

For the following reasons, we believe that DOE properly rejected Phipps' bid as nonresponsive.

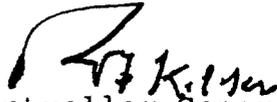
Phipps' contract price in this case would escalate at a faster rate than any increase in its established price. Although Phipps asserts that its contract price would never exceed its established price we understand that it bid its established price and, therefore, subsequent contract escalation at 102 percent of any increase in the established price would bring the contract price beyond the firm's established price. Thus, it appears that Phipps' qualification conflicts not only with the solicitation's permissible rate of escalation but also with the Government's policy not to pay more than the contractor's established price, a policy which was implicit in the special conditions quoted above.

In addition, it is clear that Phipps did not agree to limit the aggregate increase in any unit price to 20 percent of the original price as required by Article IV - Escalation, paragraph (b)(2), quoted above. The qualification in Phipps' bid appeared in its bidding schedule and by its terms would apply to "any increase" in its established price. We believe this qualification indicates an intention to escalate the contract price at the deviating rate whenever its established price is increased without regard to the 20 percent ceiling in the solicitation.

Accordingly, Phipps' bid qualification must be viewed as a material deviation because we cannot ascertain with certainty whether Phipps' bid price with unlimited escalation would prove to be the most advantageous to the Government. This conclusion is

consistent with the provision in Federal Procurement Regulations § 1-2.407-4(a) (1964 ed.) for rejecting bids which contain escalation with no ceiling "unless a clear basis for evaluation exists." Phipps' established price for acetone may increase by more than 20 percent and we cannot determine with certainty that its escalated contract price unrestricted by any ceiling will not eventually exceed its competitor's price, to which a 20 percent maximum limitation applies. Thus, we believe Keco is consistent with our holding here because, unlike Keco, it is not clear that the deviating bidder will be low under all circumstances.

The protest, therefore, is denied.

  
Deputy Comptroller General  
of the United States