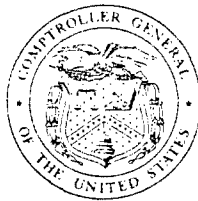


DECISION



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

9278

FILE: B-192819

DATE: February 26, 1979

MATTER OF:

Versatile Services, Inc.; *DLG01014*
Palmetto Enterprises, Inc.

DIGEST:

[Protest Alleging Deficiencies in IFB]

1. IFB provision reflecting Navy Comptroller Manual requirement for 40 percent increase in composite military labor rates to be charged contractor if unsatisfactory conditions have to be corrected by military personnel is not an unlawful penalty since 40 percent factor is based on actual costs associated with military labor.
2. Extension of bid opening date by thirteen days by amendment which makes substantive changes in IFB provides sufficient time to allow prospective bidders to prepare new or revised bids. Other amendments which make no changes of substance need not further extend bid opening date.

Versatile Services, Inc. (Versatile) and Palmetto Enterprises, Inc. (Palmetto) protest invitation for bids (IFB) No. N00612-78-B-0073, issued by the Naval Supply Center (NSC), Charleston, South Carolina, for the procurement of mess attendant services for the Naval Support Activity in New Orleans, Louisiana.

Versatile protests the omission of certain data from the IFB and the illegible printing of pages 19, 20, and 26 of the IFB. These deficiencies were corrected by amendments to the IFB; consequently, we view Versatile's protest as moot.

Palmetto objects to the inspection and acceptance clause of the IFB which it views as an "unlawful provision" which imposes "a penalty" for unsatisfactory performance. It also objects to the time allowed for submission of bids following issuance of IFB amendment 0004, which extended the bid opening date from September 8, 1978 to September 21, 1978. Palmetto claims that this was

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not "sufficient time to assess the impact" of that amendment and two subsequent amendments, issued on September 11 and September 13, on its bid price. For the reasons set out below, Palmetto's protest is denied.

The inspection and acceptance clause allows for periodic sanitation inspections. If an item is assigned an unsatisfactory grade, the contractor is to be notified to correct it within two hours. If the condition is not promptly corrected by the contractor, after receipt of the notice, military personnel are to be used to correct the condition. The clause further provides that:

"[a] deduction will be made from amounts due the contractor in an amount equal to the higher of (1) the rates then set forth in the Navy Comptroller Manual (increased by 40%), paragraph 035750, as amended, for military labor multiplied by the time involved in each instance, or (2) the cost to the contractor for employees performing like tasks times the hours involved."

It is the provision allowing for a 40 percent increase in the Navy Comptroller Manual rates that Palmetto challenges as being an unlawful penalty.

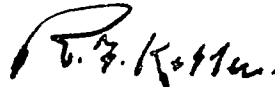
That Manual sets forth composite military pay rates. It also provides that for reimbursement purposes, the rates are to be increased to cover a portion of the costs of military personnel benefits (such as retirement) which are not included in those rates. The 40 percent factor in the IFB is based on the acceleration rates specified in the Manual. Since that factor is based on actual costs associated with military labor, we see no basis for regarding it as an unlawful penalty.

We also see no merit in Palmetto's other contention. While Palmetto complains of the short time it allegedly had to prepare an adequate bid in light of the three amendments issued within a period of one week, it offers

no evidence or explanation of how its bid might have been adversely affected. Amendment 0004 changed two clauses to correctly identify the Naval Support Activity as the place where the mess attendant services were to be provided, and replaced the illegibly printed original pages 19, 20, and 26 of the IFB. Amendments 0005 and 0006 made minor corrections and did not extend the bid opening date.

Generally, the procuring activity discharges its responsibility when it issues an amendment in sufficient time to permit all prospective bidders time to consider such information in submitting their bids. 52 Comp. Gen. 281, 283 (1972). When an amendment will require additional time for bidders to prepare bids, the time for bidding should be appropriately extended. Defense Acquisition Regulation 2-208(b). Bid opening was extended by 13 days by amendment 0004, the only amendment of the last three which arguably made substantive changes or could have appeared to make such changes (bidders may not have been able to read the original pages 19, 20, and 26). Amendments 0005 and 0006 merely made one minor correction and clarified one minor point, for which we see no need for the Navy to have further extended the bid opening date.

The protest is denied.



Deputy Comptroller General
of the United States