



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: J. Caldarera & Company, Inc.

File: B-276201

Date: May 21, 1997

Paul G. Pastorek, Esq., and Sean D. Moore, Esq., Adams and Reese, LLP, for the protester.

Newton L. Klements, Esq., Department of the Army, for the agency.

Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where bidder provides in its bid conflicting information concerning its intention to be bound to the estimated quantities of sub-item which are subject to an equitable adjustment, the bid is ambiguous regarding whether the bidder intends to be bound to the original or amended estimate and was properly rejected.

DECISION

J. Caldarera & Company, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DACW29-96-B-0055, issued for the construction of a bridge over the Davis Pond Diversion Channel at U.S. Highway 90 in St. Charles Parish, Louisiana.

We deny the protest.

The IFB, issued on June 14, 1996, required the submission of lump-sum prices for some items and unit and extended prices based on estimated quantities for the majority of items. After the issuance of various amendments, six bids were opened on December 17. Caldarera's bid was low with a total price of \$8,125,978. Caldarera's bid was rejected as nonresponsive because Caldarera did not furnish with its bid its direct bond costs as required by the IFB for the evaluation of bids for the small disadvantaged business concerns preference. The agency subsequently also determined that Caldarera's bid was ambiguous with respect to another material requirement concerning variations in quantities. Caldarera protested the agency's determination.

To be responsive, a bid must show on its face at the time of bid opening that it is an unqualified offer to comply with all the material requirements of the solicitation

and that the bidder intends to be bound by the government's terms as set forth in the solicitation. John P. Ingram, Jr. & Assocs., Inc., B-250548, Feb. 9, 1993, 93-1 CPD ¶ 117 at 2. If the bid is subject to more than one reasonable interpretation, it is ambiguous and must be rejected as nonresponsive under the rigid rules applicable to sealed bid procurements. Sabreliner Corp., 64 Comp. Gen. 325, 328 (1985), 85-1 CPD ¶ 280 at 4.

Of particular relevance here, the solicitation contained a "Variations in Estimated Quantities" clause which provided for an equitable adjustment in price or an extension of time on the three subdivided items in the IFB if it was discovered during contract performance that the actual quantity of materials required was at least 15 percent greater or less than the estimated quantity which was bid on. Amendment No. 0004 to the IFB changed the numbering of these items and increased the estimated quantities for one of the items. Caldarera acknowledged the amendment, thereby agreeing to its terms. However, it also submitted the original page 6 of the IFB. Specifically, under the original IFB page 6, the subdivided item identified as bedding was originally subdivided into two subitems as follows:

Item No.	Description	Estimated Quantity	Unit	Unit Price	Est. Amt.
0044. Bedding					
0044AA.	First	1,470 CY	1,470	CY	
0044AB.	All Over	1,470 CY	500	CY	

On the amended bid schedule page which contained the renumbered item for bedding, the agency increased the estimated quantities to 2,600 cubic yards and 1,000 cubic yards, respectively. The estimated quantity is critical for determining when an equitable adjustment in price or an extension of time is warranted under the IFB's variations in estimated quantities clause. By acknowledging the amendment, but including the unamended page 6, Caldarera created an ambiguity in its bid as to whether it was agreeing to the lower estimated quantities of the original IFB or the higher estimated quantities contained in the amendment for purposes of equitable adjustment. Accordingly, we can only conclude that on its face Caldarera's bid is not a firm commitment to what the IFB envisions as the legal relationship between the parties under the variations in estimated quantities clause and is therefore nonresponsive. Harvey Honore Constr. Co., Inc., B-262071.2, Jan. 31, 1996, 96-1 CPD ¶ 30 at 3.

The protest is denied.

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