



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

B-179233

October 15, 1973

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Modern Maintenance Company, Inc.
3121 East La Palma
Anaheim, California 92806

Attention: Mr. Dennis L. Timman

Gentlemen:

Reference is made to your letters dated June 29, 1973, and July 16, 1973, protesting against the award of a contract to Ronco Maintenance, Inc., under invitation for bids (IFB) No. H02476-73-C-2212, issued May 4, 1973, by the Officer in Charge of Construction (OICC), Naval Supply Center, Oakland, California.

The IFB was for the supply of janitorial services at the Naval Supply Center, Oakland, California, and its Alameda Facility, Alameda, California. Paragraph 10.2 of the IFB, entitled "Items of Bids," required each bidder to submit his bid in triplicate on NAVSOCKS form 2996 upon the following terms:

"Item 1. Price for entire work complete in accordance with Specification 12-73-2212 (Sub-bid prices must be shown on the schedules of Section 2B of the attached Specifications)."
(No. 10 is Added.)

Similarly, Amendment Nos. 1 and 2 to the IFB, which added new work items to Schedule 2B, contained the following caution:

"Notes: Bidders are instructed to insure that the total bid includes SUB-BID price * * *."

The solicitation's Section 2B, entitled "Work and Bid Schedule," provided blanks for the entry of sub-bids upon each of the 82 separate maintenance tasks set forth in the specifications, as well as a lump sum price for the total work to be performed.

The low bid, submitted by your company, failed to supply any of the sub-bid prices of Section 2B as required by the IFB. By letter of June 22, 1973, Ronco Maintenance, Inc., the second lowest bidder, protested any award of the contract to your company on the ground that your

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failure to provide the sub-bid prices of Section 2B should result in your bid being deemed nonresponsive to the IFB. On June 20, 1973, the contract was awarded to Roneco as the lowest responsive and responsible bidder, and by letter dated June 29, 1973, your company protested to the OICC, alleging that your failure to submit the sub-bid prices of Section 2B should have been considered a minor informality in accordance with Armed Services Procurement Regulation (ASPR) 2-405, and therefore should have been waived as an immaterial variation from the exact requirements of the IFB.

In response to your protest, the Navy furnished our Office an administrative report which stated that your failure to submit the required sub-bid prices was regarded as a material deviation from the requirements of the IFB. The report concluded that your omission was not a mere informality, but rather an element of bid price composition essential to the administration of the maintenance contract, the lack of which made your bid nonresponsive.

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 substance. 30 Comp. Gen. 179 (1950). Any deficiency or deviation which goes to the substance of the bid by affecting the price, quantity or quality of the articles offered, so as to be prejudicial to the rights of other bidders, is a material deviation and may not be waived. 51 Comp. Gen. 543 (1972).

In the instant case it is clear that the sub-bid prices required by the IFB were material. Bidders were informed by paragraph 1A.16 of the IFB that the areas listed in Section 2B represented approximate building interiors only, and that if measurement by the contractor showed an inaccuracy in excess of 2 percent, a contract price adjustment based on the sub-bid prices would be granted. In the absence of any sub-bid price, it would have been impossible to implement the contractual formula. Second, paragraph 1A.23 of the solicitation stated that both progress payments and deductions for nonperformance would be based upon the respective sub-bid prices. Finally, paragraph 1A.24 of the IFB provided for negotiated changes in sub-bid prices in the event of any Government-directed increases or decreases in the areas or items of work.

In view of the above considerations, we must concur with the procuring agency's conclusion that an award on your bid would have resulted in a contract the terms and conditions of which would have necessarily varied from the terms and conditions of the IFB.

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Therefore, we regard your failure to submit sub-bid prices as a material deviation which rendered your bid nonresponsive to the IIA. Accordingly, your protest is denied.

Sincerely yours,

Paul G. Dabbling
For the Comptroller General
of the United States