



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hercules Construction Corp.

File: B-271872

Date: July 26, 1996

Gregory Rigas for the protester.

Katherine S. Nucci, Esq., Adduci, Mastriani & Schaumberg, for Volmar Construction, Inc., an intervenor.

Timothy A. Chenault, Esq., Department of Transportation, 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

The submission with a bid of a required work schedule which is inconsistent with required milestone and completion dates creates an ambiguity as to whether the bidder intended to be bound by the required dates, and such a bid is properly rejected as nonresponsive.

DECISION

Hercules Construction Corp. protests the rejection of its bid under invitation for bids (IFB) No. DTCG50-96-B-643ED7, issued by the Department of Transportation, U.S. Coast Guard, for the construction of various facilities at two New York state locations (Fort Wadsworth and Rosebank). The agency rejected Hercules's bid as nonresponsive because the completion and interim milestone dates in Hercules's computer-generated work schedule furnished with its bid exceeded construction completion and milestone dates required by the IFB.

We deny the protest.

The IFB, issued on March 11, 1996, required bidders to submit lump-sum prices for four base bid items (one item for Fort Wadsworth and three items for Rosebank) and four option items for additional work to be performed at Fort Wadsworth. Award was to be made on the basis of the total price bid for the base bid items. Bidders were required to submit with their bids a computer-generated schedule showing a summary of work "with a minimum of forty activities." The "activities" were to include contract award (to be assumed to be made on April 18, 1996), notice to proceed, final inspection, and final acceptance. Bidders were advised that a "[f]ailure to submit this schedule as required may make your bid non-responsive and [be] cause for rejection of that bid." In another IFB clause covering

commencement, prosecution, and completion of work, bidders were advised that Fort Wadsworth construction was to be completed not later than 400 calendar days after award and the interim milestone for that work was February 1, 1997. The clause also provided that the Rosebank construction was to be completed no later than 360 calendar days after award. It further confirmed that completion dates were to be based on an April 18, 1996, award. The Fort Wadsworth and Rosebank projects were to be completed by May 23, 1997, and April 13, 1997, respectively.

Bids were opened on April 10. Hercules submitted the low bid of \$11,919,000. Volmar Construction, Inc. submitted the second low bid of \$14,720,000. Subsequent to the opening, Hercules alleged a mistake in bid in the amount of \$2,350,000 (correction would thus increase its bid price to \$14,269,000) and submitted worksheets to substantiate its allegation. While considering the alleged mistake, the agency determined that Hercules's computer-generated schedule did not conform to the completion and interim milestone dates required in the IFB, and did not contain "a minimum of forty activities." Hercules's schedule showed a final acceptance date of June 2, 1997, and an interim milestone date of May 5, 1997, for Fort Wadsworth and a final acceptance date of May 12, 1997, for Rosebank. These dates were respectively 10, 93, and 29 days later than the dates required by the IFB. Accordingly, the agency rejected Hercules's bid as nonresponsive.

Hercules protests the rejection of its bid as nonresponsive and the refusal to permit correction of its bid price. It argues that its bid was responsive because the requirement for a work schedule did not relate to bid responsiveness, but rather to a bidder's responsibility.

Since a bid, to be responsive, must be an unequivocal offer to perform in accordance with all the material terms and conditions of the IFB and since an IFB delivery or completion date schedule is a material requirement, a bidder's unequivocal agreement to abide by the required schedule must be clear on the face of the bid in order for the bid to be deemed responsive. See Banks Ship Rigging Corp., B-239853, Sept. 4, 1990, 90-2 CPD ¶ 181. Responsiveness is determined at the time of bid opening based on all the information submitted with the bid. Terra Vac, Inc., B-241643, Feb. 7, 1991, 91-1 CPD ¶ 140, aff'd on recon., B-241643.2, June 21, 1991, 91-1 CPD ¶ 588. It is irrelevant whether the work schedule was requested for purposes of determining bidder responsibility--since it was furnished with the bid and was inconsistent with material IFB milestone and completion requirements, thereby creating an ambiguity in Hercules's bid as to its intent to be bound by the IFB schedule, the rejection of Hercules's bid based on the ambiguity was proper. Id.

Hercules also contends that, contrary to the contracting officer's affirmative determination of responsibility, Volmar is nonresponsive. However, our Office does not review an affirmative determination of responsibility by a contracting

officer absent a showing of bad faith on the part of the procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied; neither showing has been made here. 4 C.F.R. § 21.5(c) (1996).

The protest is denied.

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