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DECISION



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

FILE: D-186691

DATE: October 20, 1976

MATTER OF: Arnessen Marine Systems, Inc.

DIGEST:

1. Bidder is an "interested party" under 4 C.F.R. 20.1(a) of GAO Bid Protest Procedures regardless of whether its own bid is responsive, and thus has standing to protest the award of a contract to an allegedly nonresponsive bidder.
2. IFB document which fails to specify delivery schedule, clear delivery terms or place of inspection and acceptance is defective and should be cancelled. Questions of responsiveness of low bidder are thus moot and need not be considered, although it is noted that low bidder's terms and conditions which are incorporated into bid are at variance with the terms and conditions specified in the IFB and would have thus rendered that bid nonresponsive.

Arnessen Marine Systems, Inc. (Arnessen), protests the proposed award to Redifon Computers Limited (Redifon) of a contract to supply a marine radar simulator and marine radar displays at the Merchant Marine Academy, Kings Point, New York, under Solicitation No. B2-MA76-9, issued by the Maritime Administration, Department of Commerce.

Bids were opened on May 11, 1976. Arnessen and Redifon submitted bids in response to the solicitation. On May 27, 1976, Arnessen protested to the contracting officer award to Redifon on the ground that the Redifon bid was nonresponsive. The contracting officer subsequently determined that one of Redifon's bids (it submitted three separate bids) was responsive (its Bid "B"). On June 9, 1976, Arnessen protested to this Office.

The Maritime Administration argues initially that since Arnessen's own bid was nonresponsive, it is not an "interested party" under our Bid Protest Procedures. 4 C.F.R. 20.1(a). We disagree. In order to qualify as an "interested party" the protester should have a legitimate interest in the award selection. Celeman Transfer and Storage, Inc., B-182420, October 16, 1975,

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75-2 CPD 238. We think Arnessen meets this standard. It is a bidder on the procurement and alleges that it is the low responsive bidder. Consequently, we believe that the protester has a legitimate interest in the award selection and thus is an "interested party."

The Redifon bid incorporated certain terms and conditions in addition to the terms of the IFB, including among others, a schedule of payment prior to delivery and acceptance, and its own standard terms and conditions, some of which are at variance with the terms of the IFB. Notable among the latter is a lack of a firm offer ("The quotation is conditioned upon Redifon's written acceptance of the customer's order"), the lack of a firm price ("The prices quoted are based on current costs * * * and are subject to adjustment by reason of any changes in those costs prior to the completion of the order"), variation in the warranty, a conflict of law ("The contract resulting from Redifon's acceptance of the customer's order shall be governed and interpreted in all respects by and in accordance with English law"). The question of responsiveness of a bid concerns whether the bidder has unequivocally offered to provide the requested items in total conformance with the terms and specification requirements of the invitation. See Lift Power, Inc., B-182604, January 10, 1975, 75-1 CPD 13. Thus, any of the foregoing would be sufficient to render the Redifon bid nonresponsive, without considering the issues raised by the protester.

However, there is a more fundamental matter which this Office must consider. The IFB lacks such essential terms as the time of performance (delivery), place of inspection and acceptance, and clear and unambiguous delivery terms. It is a cardinal principle of formal advertising that all bidders compete on the same basis, and the lack of or ambiguity in essential terms and conditions would preclude that possibility. See 53 Comp. Gen. 32 (1973); 51 id. 518 (1972).

For the foregoing reasons, the IFB should be cancelled and the requirement readvertised. The question of the responsiveness of any of the bidders is thus moot.


Deputy Comptroller General
of the United States