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DECISION



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

FILE: B-204053

DATE: January 4, 1982

MATTER OF: Esko & Young, Inc.

DIGEST:

Compliance with a bid acceptance period stated in an invitation generally is a material requirement because a bidder offering a shorter acceptance period has an unfair bidding advantage since it is not exposed to market place risks and fluctuations for as long as its competitors are. Where only one bid is received, however, the fact that it offers a shorter acceptance period than solicited does not require its rejection, since there are no competitors subject to possible prejudice.

Esko & Young, Inc., protests the Veterans Administration's (VA) rejection of its bid under invitation for bids (IFB) No. 793-6-81 for roofing work on a building at the VA Supply Depot, Hines, Illinois. The VA rejected the bid, which was the only timely one received, as nonresponsive for failure to comply with the bid acceptance period requirement of the IFB.

We do not believe the VA was precluded from accepting Esko's bid, and the protest therefore is sustained.

The IFB stated that "bids offering less than 30 days for acceptance by the Government from the date set for opening will be considered nonresponsive and will be rejected." Esko's bid offered only a 10 day acceptance period, and therefore was rejected as nonresponsive. The VA then resolicited for the roofing requirement and, as a result of the second competition, award was made to another company.

Esko contends that its insertion of the 10 day figure in the IFB space for the bid acceptance period was a clerical error which the VA either should have waived or allowed to be corrected after bid opening as a minor informality. Esko asserts that since it was the sole bidder, such post-bid opening waiver or correction would not prejudice any other firm.

All of our previous decisions concerning a bidder's failure to offer a required bid acceptance period involved fact situations in which two or more firms submitted bids. In those decisions, we consistently held that a provision in an IFB which requires that a bid remain available for acceptance by the Government for a prescribed period of time in order to be considered for award is a material requirement, and that the failure to meet such a requirement thus renders a bid nonresponsive. See, e.g., 48 Comp. Gen. 19 (1968); 46 id. 418 (1966). As we explained in Miles Metal Corporation, 54 Comp. Gen. 750 (1975), 75-1 CPD 145, to hold otherwise affords the bidder that limited its bid acceptance period an unfair advantage over its competitors because that bidder has the option to refuse the award after the time set in its bid has expired in the event of, for example, unanticipated increases in cost. On the other hand, bidders complying with the required acceptance period would not have that option but would be bound by the Government's acceptance within the period required in the invitation.

Since Esko was the sole bidder, however, the rationale for considering compliance with the invitation's bid acceptance period to be a material bidding requirement does not apply. No bidding advantage accrues to the single bidder stating a bid acceptance period less than that requested in the Government's solicitation because there are no competitors who, in contrast, subjected themselves to the risks of maintaining their bid prices for the longer period. Thus, as long as the Government can accept the bid within the acceptance period offered, or the bidder agrees to extend the bid acceptance period (contrast Ramal Industries, Inc., B-202961, August 25, 1981, 81-2 CPD 177, involving multiple bidders), we do not believe that a bid in this circumstance must be rejected as nonresponsive.

The protest against the rejection of Esko's bid is sustained.

The VA has advised us that the roofing work under the protested solicitation and contract is well under way and that any termination of the present contract would result in extensive termination costs and damaging delays in the completion of the building's roof. Therefore, we do not believe it is in the Government's best interest to recommend any remedial action in this instance. Moreover, since this is the first decision that discusses and explains the materiality of a bid acceptance period requirement in a sole bidder situation, and since there is no explicit regulatory guidance for procuring agencies in this area, we can understand the VA's application of the general rule involving multiple bidders to the instant situation. For future reference and application in single bid situations, however, we are bringing this decision to the attention of the Administrator of Veterans Affairs.

Harry R. Van Cleave

For the Comptroller General
of the United States