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DECISION



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

FILE: B-204311

DATE: February 8, 1982

MATTER OF: Franklin Instrument Co., Inc.

DIGEST:

1. A bid is ambiguous because it contains a qualifying statement which is subject to two reasonable interpretations, one of which will render it responsive and the other nonresponsive. An ambiguous bid is not an unequivocal offer to perform the contract in strict compliance with the specification and must be rejected as nonresponsive.
2. A bidder's intentions are manifested within the "four corners" of the bid documents. Therefore, a statement which qualifies items offered, even though located in the bid's delivery section, renders the bid nonresponsive.

Franklin Instrument Co., Inc., protests the rejection of its bid, and the award of a contract to any other firm under invitation for bids (IFB) No. WFC-AA-4434-3-12-81 issued by the General Services Administration (GSA) for the procurement of electric clocks. GSA rejected Franklin's low bid because it was considered to be nonresponsive. We deny the protest.

The IFB specified that each clock be provided with a "three conductor [three wire] cord, including equipment grounding conductor." In the "Product and Inspection Point(s)" section of its bid, Franklin included the following statement: "Items 1-10 quality and configuration same as furnished on previous contract GS-035-51588." Under the original terms of the previous contract Franklin furnished clocks to GSA with three wire grounding cords. During the term of that contract,

however, GSA modified the requirements so that Franklin could furnish some clocks with two wire, nongrounded cords.

GSA rejected Franklin's bid because the statement in question took exception to the specifications. GSA believes that if the bid is accepted, the Government's contractual right to receive clocks with three wire grounding cords would be in doubt.

As its original basis for protest, Franklin alleged that the qualification statement in its bid had no effect on the quality or performance capability of the clocks it offered. Franklin asserts that since its clocks are made entirely of plastic, as permitted by the IFB which allowed for either plastic or metal clock movements and cases, a three wire grounding cord is unnecessary. Franklin asserts plastic clock parts do not conduct electricity and therefore grounding against electric shock is not required. Franklin believes that the only time the three wire cord should be required is when the clock movements or cases are made of metal. In essence, therefore, Franklin submits that GSA made a mistake in the IFB by failing to specify that a three wire grounding cord need be provided only when a clock movement or case is metal.

In subsequent protest submissions Franklin appears to abandon its argument regarding the need for a grounding cord on plastic clocks. Instead, it takes the position that its bid was not qualified, and that it fully intended to provide all clocks with three wire cords. In this regard, Franklin argues that GSA incorrectly assumed that the statement referring to the previous GSA contract meant that it would provide clocks with two wire cords. Franklin contends that since it also provided three wire cords under the prior contract, GSA should have assumed that the statement stood for the proposition that clocks with three wire cords would be provided under this solicitation. Furthermore, Franklin argues that the statement should not have been considered as a qualification to its bid because it was located in the "Product and Inspection Point(s)" section of the bid.

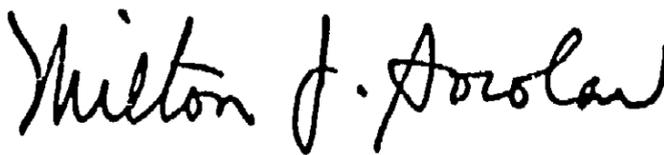
The question of the responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the requested items in total conformance with the specification requirements. A bidder's intention must be determined from the bid itself at the time of bid opening. Abbott Laboratories, B-183799, September 23, 1975, 75-2 CPD 171.

Only material available at bid opening may be considered in making a responsiveness determination. Fisher-Klosterman, Inc., B-185106, March 9, 1976, 76-1 CPD 165. Thus, Franklin's post opening statement of its intent cannot be considered in determining the responsiveness of the bid.

In our opinion, Franklin's bid falls short of an unequivocal offer to provide the requested clocks with three wire cords as required by the IFB's specifications. We believe the statement included in the bid can reasonably be interpreted as Franklin's offer to provide plastic clocks with two wire cords. Indeed, Franklin's initial submission suggests to us that Franklin intended to perform in precisely that fashion. Moreover, even if we were to assume that Franklin's interpretation of its bid was a reasonable one, the bid at best is ambiguous because it is subject to two reasonable interpretations, under one of which it would be responsive, and under the other nonresponsive. Under these circumstances, a bid is properly rejected as nonresponsive. Simmonds Precision, B-185469, March 18, 1976, 76-1 CPD 186.

We also find no merit in Franklin's contention that GSA should not have considered the statement as a qualification to the items offered because the statement was located in a section of the bid concerning deliveries. The question, however, is not the location of the qualifying language, but rather its legal effect on the contractor's performance obligations. Bids have often been considered to be qualified by language which is extraneous to the pricing schedule itself, such as in letters or descriptive data accompanying the bid. See e.g., Burley Machinery, Inc., 55 Comp. Gen. 592 (1975), 75-2 CPD 411. Thus, the responsiveness of a bid is to be determined by the intentions of the bidder manifested within the "four-corners" of the bid documents. See Parker-Hannifin Corporation, B-186385, August 3, 1976, 76-2 CPD 120. Since Franklin's statement clearly referred to the items it intended to offer, the fact that it was located in an area other than the bid's schedule did not lessen or eliminate its qualifying effect on the bid.

The protest is denied.

for 
Comptroller General
of the United States.