

119213
Ahearn

DECISION



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

FILE: B-207352

DATE: August 17, 1982

MATTER OF: Hub Testing Laboratories

DIGEST:

1. Although protester contends clause contained in its bid was meaningless, agency's interpretation that lump-sum bid did not include travel costs as required was reasonable. Since bid was subject to more than one interpretation, one of which makes bid nonresponsive, bid was properly rejected.
2. A bidder's post-opening statement of intent cannot be considered in a responsiveness determination since such a statement would prejudice other bidders and affect the responsiveness of the bid, thereby giving the bidder the option to accept or reject award.

Hub Testing Laboratories (Hub), Waltham, Massachusetts, protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 82-48, dated April 6, 1982, issued by the Centers for Disease Control (CDC), Atlanta, Georgia.

We deny the protest.

The IFB was for the furnishing of expert/consultant services to monitor contractor work practices during performance of a contract for removal/encapsulation of asbestos at the CDC. Fourteen bids were received and opened on April 29, 1982. Hub was the low bidder. However, the contracting officer determined that the Hub bid was nonresponsive. Award of the contract was made to the second low bidder, Georgia Tech Research Institute, Atlanta, Georgia.

The basis for the determination of nonresponsiveness was the following language in a paragraph, entitled Travel and Per Diem, contained in a letter included with Hub's bid:

"Travel authorized under this contract shall be reimbursed in accordance with the current Government Travel Regulation. Travel requirements under this contract shall be met using the most economical form of transportation available. All travel shall be scheduled sufficiently in advance to take advantage of offered discount rates."

The contracting officer determined that the paragraph in question was a qualification of the bid since the condition could require the Government to "reimburse" the contractor for "authorized" travel. According to the CDC, the IFB contemplated a lump-sum price and any travel necessitated by the project should have been included in such price.

After bid opening, Hub alleged that, since there was no travel authorized under the contract, the paragraph has no meaning and that its lump-sum price included all travel costs and Hub did not expect the Government to reimburse it for travel and per diem. The bidder acknowledges that the IFB was explicit in its request for a lump-sum bid, which Hub contends it did. According to the Hub, the matter could have been settled by allowing Hub to verify its lump-sum bid.

An ambiguity in a bid exists where the terms of a bid are subject to two or more reasonable interpretations. 51 Comp. Gen. 831, 833 (1972); Leavitt Machine Company, B-187477, March 15, 1977, 77-1 CPD 191. Where a bid is subject to two reasonable interpretations, one of which renders it nonresponsive, the bid is properly rejected. Illinois Chemical Corporation, B-205119, February 9, 1982, 82-1 CPD 119. That is because an ambiguous bid is not an unequivocal offer to perform the contract in strict compliance with the requirements of the IFB and must be rejected as nonresponsive. Franklin Instrument Co., Inc., B-204311, February 8, 1982, 82-1 CPD 105.

In our view, the language used by Hub is subject to more than one interpretation. Looking at the language in the manner most favorable to Hub, it can be concluded that the reference to travel costs should

be ignored since no travel was authorized under the IFB. However, we also believe it can reasonably be concluded that the language was included because it was Hub's intent to exclude travel costs from its bid and bill the Government separately for those costs. We note that Hub is located in Massachusetts while the site where the contract is to be performed is Atlanta, Georgia. Since Hub's bid was therefore subject to two interpretations, one of which would make the bid non-responsive, we concur with the determination that the bid was nonresponsive.

Moreover, Hub's post-bid-opening statement of its intent cannot be considered in determining the responsiveness of the bid. Only the material available at bid opening may be considered in making a responsiveness determination. Franklin Instrument Co., Inc., supra. A bidder may not be allowed to explain his meaning when he is in a position thereby to prejudice other bidders or to affect the responsiveness of his bid. Bill Strong Enterprises, Inc., B-200546, March 5, 1981, 81-1 CPD 173.

We deny the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel