

DECISION

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

25046

FILE: B-210582

DATE: May 3, 1983

MATTER OF: Leeming/Pacquin, Division of Pfizer,
Inc.**DIGEST:**

1. Where protester includes in its bid completed clauses regarding ordering and guaranteed minimum quantities not applicable to procurement, agency may properly find bid nonresponsive if bidder's intention to comply with terms of solicitation is not discernible from the face of the bid.
2. Bid protest filed after bid opening alleging that solicitation provisions are ambiguous is timely since protester was unaware of agency interpretation forming basis of protest until after bids were opened.
3. Where protester's interpretation of an IFB instruction is inconsistent with format used in solicitation, the interpretation is not reasonable and provides no basis for concluding that IFB was ambiguous.
4. Possibility that the Government might realize monetary savings in a particular procurement if material bid deficiency is waived is outweighed by importance of maintaining integrity of the competitive bidding system.

Leeming/Pacquin, Division of Pfizer, Inc. (Pfizer), protests the rejection of its bid and the award of a contract to Ketchum Laboratories, Inc., under invitation for bids (IFB) No. DLA120-83-B-0300 issued by the Defense Personnel Support Center (DPSC), Defense Logistics Agency. DPSC rejected Pfizer's low bid because it was considered to be nonresponsive. We deny the protest.

The IFB, issued on November 26, 1982, with bid opening on December 28, 1982, was for an estimated

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quantity of 195,000 bottles of tetrahydrozoline hydrochloride ophthalmic solution, DPSC's estimated requirement for the following year.

The solicitation was prepared in accordance with the Uniform Contract Format set forth in Defense Acquisition Regulation § 2-201 (Defense Acquisition Circular No. 76-20, September 17, 1979). The solicitation contained on Overprints (preprinted attachments) LP124 and LP125, various alternate provisions relating to indefinite delivery-type contracts. The alternate provisions that were intended to apply to the acquisition were marked with an "X" in the appropriate blocks preceding the captions of the provisions. Instructions contained in the solicitation clearly stated that those were the only provisions applicable to the procurement.

Although the solicitation did not require entries in any of the clauses on Overprints LP124 and LP125, Pfizer made entries in four inapplicable clauses on those pages. DPSC rejected Pfizer's bid as nonresponsive because entries in two of those clauses made uncertain Pfizer's intention to be bound, without exception, to the terms of the contract.

Pfizer contends that, since the clauses were not meant to be applicable to the procurement, the entries made therein should not operate to reinstate the clauses as applicable. Pfizer requests that those clauses not be considered in evaluating the bids and that it be awarded the contract as the lowest responsive and responsible bidder. Pfizer alternatively contends that the inclusion of the clauses in the solicitation document created an ambiguity which requires cancellation of this solicitation and the resolicitation of the contract. Finally, Pfizer argues that our Office should sustain its protest on either of those grounds since doing so could result in less cost to the Government.

We disagree with Pfizer's contention that it should receive the award, notwithstanding the fact that it supplied information in its bid that caused DPSC to find the bid nonresponsive.

Specifically, Pfizer completed inapplicable clauses which indicated (1) that it would make all deliveries within 1 year of the date of contract award and (2) that the Government would guarantee a minimum procurement of 195,000 units. The terms of the solicitation, however, required delivery up to 90 days after the 1-year contract expired (as long as orders were placed within the 1-year period) and provided for no guaranteed minimum quantity, although it estimated the agency's needs to be 195,000 units per year.

Our Office has long held that a bid is not responsive unless a bidder unequivocally offers to provide the requested item in total conformance with the specification requirements. A bidder's intention must be determined from the bid itself at the time of bid opening. See Franklin Instrument Co. Inc., B-204311, February 8, 1982, 82-1 CPD 105. Where a bid is subject to two reasonable interpretations, one of which renders it nonresponsive, the bid is properly rejected. Hub Testing Laboratories, B-207352, August 17, 1982, 82-2 CPD 136.

It is our opinion that Pfizer's completion of the inapplicable clauses made its bid subject to more than one reasonable interpretation. Looking at the bid in the manner most favorable to Pfizer, it can be concluded that the two clauses were completed in error and that, since they initially were inapplicable to the procurement, they should be ignored in evaluating the bid's responsiveness. However, we believe it also is reasonable to conclude that the language was added because Pfizer intended to condition its bid on the guarantee of a minimum quantity and on the completion of all deliveries within 1 year. Since Pfizer's bid, therefore, was subject to two interpretations, one of which would make the bid nonresponsive, we concur with the determination that the bid was nonresponsive.

Pfizer also suggests that the solicitation was ambiguous since the instructions concerning which clauses were applicable followed by several pages those inapplicable clauses completed by Pfizer. Since no annotation deleting those clauses was included on the pages on which the clauses appeared, Pfizer presumed they were applicable and completed them.

DPSC argues that the complaint that the solicitation was ambiguous is based upon an alleged impropriety in the solicitation apparent prior to bid opening and, therefore, should have been filed prior to bid opening in order to be timely under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983). As Pfizer points out, however, not until it was informed that its bid had been rejected did it become aware that it interpreted the directions regarding the applicable clauses differently than DPSC intended and, thus, was aware of the basis of its protest. We agree with the protester and consider its protest to be timely because it was filed with our Office within 10 days of the day Pfizer learned of the rejection of its bid.

An IFB is ambiguous only if two or more reasonable interpretations of it are possible. Kleen-Rite Corporation, B-189458, September 28, 1977, 77-2 CPD 237. Pfizer interprets the IFB as deleting only those paragraphs not marked by an "X" that followed the instructions on page 10 which stated: "The clauses listed herein, if marked with an X in the space provided, apply to the solicitation." The contracting agency contends that Pfizer's interpretation of the warning was not a reasonable one and that the statement can reasonably be interpreted only as referring to the solicitation as a whole. We agree with the agency. Since the clauses appearing both before and after the instructions were presented in the same format, that is, preceded by blocks to be marked when the clause was applicable, we believe that Pfizer's interpretation is not a reasonable one.

Accordingly, we conclude that the protester's interpretation of the IFB was not reasonable, that the IFB was not ambiguous, and DPSC is correct in its position of finding the bid nonresponsive.

Pfizer argues that we should find its bid responsive or cancel the procurement and readvertise in the interest of saving the Government the additional cost of procuring the ophthalmic solution from the second lowest bidder. We must reject this argument. We have long held that the importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the Government might realize monetary savings in a particular procurement if a

material deficiency like those presented in Pfizer's bid is waived. 1010 Incorporated of Alamogordo, B-204742,
December 21, 1981, 81-2 CPD 486.

The protest is denied.

for 
Comptroller General
of the United States