

DECISION



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

FILE: B-214258

DATE: February 28, 1984

MATTER OF: Amendola Construction Co., Inc.

DIGEST:

Bid offering a bid acceptance period less than that required in the solicitation is nonresponsive and cannot be changed after bid opening since a nonresponsive bid cannot be corrected.

Amendola Construction Co., Inc. (Amendola), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 130-004 issued by the Department of Justice, Federal Prison Camp, Duluth, Minnesota. The contracting officer rejected the bid as nonresponsive to the 30-day bid acceptance period.

The protest is dismissed in part and summarily denied in part. See 4 C.F.R. § 21.3(g) (1983).

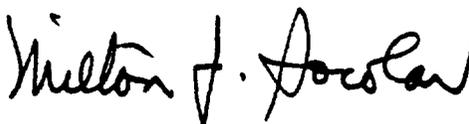
The IFB stated that bids offering acceptance periods of less than 30 days would be rejected as nonresponsive and provided an underscored space for a bidder to indicate the number of days its bid would remain open for acceptance. Amendola inserted 15 days in the space provided. Amendola contends that in the haste of preparing its bid, it confused the acceptance period with the period for the submission of reinsurance agreements. Amendola argues that the sentence in which the bid acceptance period is inserted is confusing and misleading, and contends that the procuring agency's prior solicitations had this provision filled in. Finally, Amendola indicates that it is willing to waive its 15-day restriction.

We consistently have held that a provision in an IFB which requires that a bid remain available to the government for acceptance for a prescribed period of time in order to be considered for award is a material requirement and that a failure to meet that requirement renders a bid nonresponsive. Allstate Guards and Security Services, Inc., B-213284, November 16, 1983, 83-2 CPD 576; Miles Metal Corporation, 54 Comp. Gen. 750 (1975), 75-1 CPD 145. To hold otherwise affords the bidder which 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 costs. On the other hand, bidders complying with the required acceptance period would be bound by the government's acceptance any time within that period. Thus, the nonresponsive bidder's price presumably reflects its limitations of the period the bid price will be subject to the risk of the marketplace. Allstate Guards and Security Services, Inc., supra.

The fact that Amendola has subsequently explained that the 15-day period it offered was a mistake and that it is willing to waive its restriction is irrelevant. A bid which is nonresponsive on its face may not be changed, corrected or explained by the bidder after bid opening since to permit this would give the firm the option of accepting or rejecting a contract after bids are exposed. Allstate Guards and Security Services, Inc., supra. The fact that Amendola, in the haste of preparing its bid, failed to notice the change from prior solicitations is without consequence. See Miles Metal Corporation, supra, in which we denied a protest by a bidder who failed to notice that the IFB contained a longer minimum bid acceptance period than prior solicitations.

With regard to Amendola's contention that the IFB was ambiguous, we note that the underscored space for the bid acceptance period was followed by an asterisk which referenced a provision that clearly stated: "Bid acceptance period. 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." We consider this provision to be clear. In any event, Amendola's protest against the ambiguity of the solicitation is untimely. 4 C.F.R. § 21.2(b)(1) (1983).

for 
Comptroller General
of the United States