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**DECISION**



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

**FILE:** B-218033 **DATE:** March 6, 1985  
**MATTER OF:** Sabreliner Corporation

**DIGEST:**

1. Protest concerning responsiveness of awardee's bid is timely since it was filed within 10 working days of date agency determined bid responsive and awarded firm the contract.
2. Under section 21.1(d) of GAO Bid Protest Regulations, 49 Fed. Reg. 49417, 49420 (to be codified at 4 C.F.R. § 21.1(d)), a protest may be dismissed where the protester fails to furnish a copy of the protest to the contracting officer within 1 day after the protest is filed with GAO. Dismissal is not warranted in this case of first impression where agency was aware of protest basis, raised no objections prior to filing its protest report, and timely filed the protest report. However, GAO emphasizes criticality of compliance with this filing requirement.
3. Bid containing notation "N/C Pan Stock" as a material cost for several line items is ambiguous, at best, and should have been rejected. Record shows that pan stock refers to ancillary items which are normally provided by the contractor and phrase could reasonably be interpreted as obligating bidder to provide only pan stock items at no charge or providing the required materials only to the extent they could be supplied from pan stock.

Sabreliner Corporation protests the award of a contract to Midcoast Aviation, Inc. under invitation for bids (IFB) No. N68520-85-B-9102, issued by the Department of the Navy for the repair and scheduled maintenance of a CT-39E aircraft which had been heavily damaged in a crash. Sabreliner contends that Midcoast's bid was nonresponsive and should have been rejected.

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We sustain the protest. This decision is issued pursuant to the express option provision set forth in section 21.8 of our Bid Protest Regulations, 49 Fed. Reg. 49417, 49422 (1984) (to be codified at 4 C.F.R. § 21.8), and is rendered within 45 calendar days of the date the protest was filed.

Initially, we note that the Navy contends that the protest was not timely filed. The Navy argues that Sabreliner knew or should have known the basis for its protest when bids were opened on January 7, 1985. Since Sabreliner did not file a written protest within 10 working days of that date, the Navy concludes that the protest is untimely and should not be considered on the merits. In addition, the Navy urges that we dismiss Sabreliner's protest for failure to comply with section 21.1(d) of our Bid Protest Regulations, 49 Fed. Reg. 49417, 49420 (to be codified at 4 C.F.R. § 21.1(d)), which requires that a copy of the protest be furnished to the contracting officer or his designee within 1 day after the protest is filed with GAO.

In our view, Sabreliner's protest is timely since it was filed within 10 working days of the date the Navy awarded the contract to Midcoast. A protester is not obligated to protest until an agency takes some action adverse to the protester's interest. Brandon Applied Systems, Inc., 57 Comp. Gen. 140 (1977), 77-2 CPD ¶ 486. Although Sabreliner may have known, as of bid opening, the basis for its allegation that Midcoast's bid was nonresponsive, it is the agency's acceptance of the alleged nonconforming bid which forms the basis for protest. It was not until the Navy determined the firm eligible for award and awarded Midcoast the contract that the Navy took some action adverse to the protester's position. Since the protest was filed within 10 working days of that date, the protest is timely. See M&M Services, Inc.; EPD Enterprises, Inc., B-208148.3, B-208148.4, May 23, 1983, 83-1 CPD ¶ 546.

Concerning the Navy's argument that the protest should be dismissed because of the protester's failure to furnish a copy of the protest to the agency within 1 day after the protest was filed, our regulations provide that the failure to comply with this provision may result in dismissal of the protest. See Bid Protest Regulations, § 21.1(f), 49 Fed. Reg. 49417, 49420 (to be codified at 4 C.F.R. § 21.1(f)). Under section 3553(b)(2) of the Competition in Contracting Act of 1984 (CICA), Pub. L. No. 98-369, 98 Stat. 494, July 18, 1984, and 21.3(c) of our Bid Protest

Regulations, the agency is required to furnish its report on the protest with our Office within 25 working days (or 10 days under our express option procedures, Bid Protest Regulations § 21.8(d)(1)), from the date of telephone notice of the protest from our Office. Clearly, the agency will not be in a position to comply with this requirement unless it promptly receives a copy of the protest. The time limits set forth in CICA, and in our regulations, are designed to ensure that protests will be resolved expeditiously. Therefore, whenever a protester fails to furnish a copy of the protest to the agency within 1 day after the protest is filed, as required by section 21.1(d), the protest may be dismissed as a result. Otherwise, the ability of our Office and the contracting agencies to comply with the statutory time frames is jeopardized.

In this case, however, we do not find that dismissal of the protest is required. We note that Sabreliner pursued its protest initially with the Navy and, although the Navy may not have timely received a copy of the submission filed with our Office, the Navy had actual knowledge of the grounds which formed the basis for Sabreliner's protest at the time the protest was filed with our Office. Also, the Navy filed its protest report in a timely manner under our express option procedures and at no time prior to that date did the Navy object to the protester's failure to comply with this provision. Under the circumstances, and in view of the fact that the application of section 21.1(a) is an issue of first impression, we find that dismissal is not required and the merits of the protest will be considered.

The IFB indicated that award would be made to the contractor submitting the lowest responsive bid and that the low price would be determined by the total aggregate price of the contract line items, the evaluated labor rates applied to the government's best estimate of hours to perform the work and the prices provided by the contractors in Attachments 1 and 4. Attachment 1 was comprised of nine line items and required bidders to submit a firm fixed price for the material cost and installation of these items. Bidders were also notified that some of the items might not be ordered because the Navy had a limited supply in stock.

The bid submitted by Midcoast contained the notation "N/C Pan Stock" for the material cost for eight of the nine line items in Attachment 1. The remaining item required the bidder to conduct an inspection and for this item, Midcoast

bid "O." Sabreliner contends that the notation "N/C Pan Stock" renders Midcoast's bid nonresponsive since the phrase could be interpreted as an offer to provide only pan stock items at no charge or, alternatively, to provide the required items only to the extent the material could be furnished from Midcoast's pan stock. Pan Stock generally refers to ancillary items, such as tubings, wires, connectors, clamps, and screws, which are not normally provided with the required materials but which are necessary for their installation. Since the materials required by Attachment 1 could not be furnished from pan stock, Sabreliner argues that under one interpretation of Midcoast's bid, Midcoast did not include a price for the material cost of several required items and under another construction, Midcoast qualified its bid.

In addition, Sabreliner notes that the Navy contacted Midcoast regarding its bid after bid opening and that as a result of that contact, Midcoast submitted an additional statement indicating that all the materials required by Attachment 1 would be furnished at no cost. Sabreliner argues that the fact that the Navy found it necessary to contact Midcoast demonstrates that there was confusion regarding the meaning of the notation in Midcoast's bid. Sabreliner contends that the Navy should have found the bid nonresponsive and should not have permitted Midcoast to explain the ambiguity.

The Navy argues that Midcoast's bid bound the firm to provide all the materials required by Attachment 1 at no charge. The Navy indicates that it considered the term "pan stock" irrelevant and assumed that the term merely referred to where the materials would be obtained by Midcoast. The Navy argues that since the phrase has no impact on price, quantity, quality or delivery, Midcoast's bid was responsive to the requirements of the IFB and was properly accepted. Furthermore, the Navy states that Midcoast was contacted simply to verify its price and that it was not allowed to alter its bid in any manner.

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 terms and specification requirements of the invitation at a fixed price. M. A. Barr, Inc., B-189142, Aug. 3, 1977, 77-2 CPD ¶ 77. If the bid is subject to more than one reasonable interpretation, it is ambiguous and must be rejected as nonresponsive under the rigid rules applicable to procurement made by formal advertising. The Kerite Company, B-212206, Aug. 10, 1983, 83-2 CPD ¶ 198. A bidder's

intention must be determined from the bid itself at the time of bid opening and only material available at bid opening may be considered in making a responsiveness determination. International Waste Industries, B-210500.2, June 13, 1983, 83-1 CPD ¶ 652.

Here, we believe that the phrase "N/C Pan Stock" may reasonably be interpreted as obligating Midcoast only to supply pan stock items at no charge and therefore, Midcoast did not enter a bid for the material cost for those items. Although we recognize that Sabreliner's installation costs for Attachment 1 were somewhat higher than those submitted by Midcoast, the fact remains that Sabreliner's proposed material costs were approximately \$37,000 and Midcoast's failure to provide prices for these items cannot be waived as minor. Also, the phrase could be interpreted as requiring Midcoast to furnish the required items only to the extent they could be supplied from pan stock. We note that the record clearly indicates that "pan stock" items do not encompass the materials which were required by Attachment 1. Although the Navy argues that the phrase refers to where the required materials would be obtained, Midcoast itself states that pan stock materials are ancillary items which must be furnished by the contractor. Furthermore, the fact that Midcoast bid "O" for the remaining item in Attachment 1 where no materials were required casts further doubt on what meaning is to be given the "N/C Pan Stock" entries. Accordingly, we find that Midcoast's bid is ambiguous, at best, and should have been rejected.

The protest is sustained. We recommend that the contract awarded to Midcoast be terminated and award be made to Sabreliner. See Bid Protest Regulations, § 21.6, 49 Fed. Reg. 49417, 49422 (to be codified at 4 C.F.R. § 21.6).

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (1982), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

*for*   
Comptroller General  
of the United States