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Van Schaik

DECISION



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

FILE: B-218129.2

DATE: May 17, 1985

MATTER OF: ASEA Electric, Inc.--Reconsideration

DIGEST:

Where offeror qualifies bid to allow delivery later than required by the solicitation, the bid is nonresponsive and is properly rejected. In order to be responsive, a bid must contain an unequivocal offer to provide the requested items in conformance with the terms and specifications of the IFB.

ASEA Electric, Inc. requests reconsideration of our decision in McGraw-Edison Co. and ASEA Electric, Inc., B-217311, B-217311.2, Jan. 23, 1985, 85-1 CPD ¶ 93, in which we dismissed as untimely ASEA's protest under invitation for bids (IFB) No. DACA87-84-B-0213, issued by the Army Corps of Engineers. ASEA's protest raised two issues: (1) that the Corps allowed inadequate time to prepare bids and (2) that its bid should not have been rejected as nonresponsive.

We dismissed ASEA's original protest because the alleged failure to allow adequate time for preparation of bids concerned a solicitation defect that should have been protested prior to bid opening and because ASEA appeared to have filed its protest more than 10 working days after learning its bid was rejected. ASEA has not presented any basis for reconsideration of our conclusion concerning the untimeliness of its protest that it was not afforded sufficient time to prepare its bid.

At the time we dismissed the protest of the rejection of ASEA's bid, however, we were unaware that ASEA had earlier filed a timely protest with the Corps. On reconsideration, it has been shown that ASEA did file such a protest and that ASEA filed its protest with our Office within 10 working days of learning that its protest to the Corps was denied. Since a protest under such circumstances is timely, 4 C.F.R. § 21.2(a) (1984), we will consider the merits of ASEA's contention that its bid was responsive.

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ASEA's bid was rejected because the protester took exception to the IFB delivery schedule in a supplemental letter submitted with its bid. The Corps also found ASEA's bid nonresponsive because that letter indicated the bid price excluded taxes. We need not consider the second issue because it is clear that ASEA's treatment of the delivery schedule rendered its bid nonresponsive.

The supplemental letter stated in part:

Drawings will be sent 30 days ARO. Shipment will begin no later than 10-14 weeks after receipt of returned approved drawings along with all details required for completion of air terminal chamber designs.

ASEA maintains that the letter submitted with its bid did not contradict the IFB delivery schedule which required delivery of an initial quantity by April 14, 1985 plus 1 calendar day for each day award was delayed after November 16, 1984. Award was made on November 27. The protester also argues that its bid was responsive because the letter also stated: "The quoted transformers are in accordance with your specifications and comments listed herein." Finally, ASEA contends that any deviations in its bid were minor informalities that should be waived.

In order to be responsive, a bid must contain an unequivocal offer to provide the requested items in total conformance with the material terms and specifications of the IFB. Polychromic Designs, B-203980, Sept. 22, 1981, 81-2 CPD ¶ 238. An IFB delivery schedule is a material requirement and where the inclusion of a qualification in a bid has the effect of allowing delivery later than required by the solicitation, the bid is nonresponsive and must be rejected. Made-Rite Tool Co., Inc., B-206610, June 17, 1982, 82-1 CPD ¶ 600.

Although the delivery provision in ASEA's bid did not preclude delivery according to the IFB schedule, it permitted the contractor to make deliveries later than the IFB allowed. The supplemental letter with ASEA's bid indicated that drawings would be submitted for approval in "30 days ARO." "ARO" refers to "after receipt of notice of award or

contract." See Railway Specialties Corp., B-212535, Oct. 31, 1983, 83-2 CPD ¶ 519. The IFB allowed 30 days for delivery of the awardee's drawings and up to 30 days for government approval of those shop drawings. ASEA's bid reserved 14 weeks after approval of shop drawings for that firm to begin shipment. Adding these timeframes together indicates ASEA's bid only obligated that firm to begin shipments by May 4, 1985, in the event of a November 27, 1984 award. The terms of the IFB delivery schedule required that delivery begin on April 25 (April 14 plus 11 days based on the November 27 award date). Since ASEA's bid permitted deliveries later than allowed by the IFB delivery schedule, the bid was nonresponsive. ASC Assoc., B-199706, Feb. 5, 1981, 81-1 CPD ¶ 67. A deviation from the required delivery schedule cannot be waived as a minor informality since, as stated above, delivery terms are material requirements. Railway Specialties, Corp., B-212535, supra.

Concerning ASEA's argument that its bid was responsive because the supplemental letter stated that the quoted transformers were in compliance with the specifications, a blanket statement that the bidder will comply with all specifications of a solicitation does not render an otherwise nonresponsive bid responsive. Zero Mfg. Co., B-210123.2, Apr. 15, 1983, 83-1 CPD ¶ 416. In any event, this statement refers to the transformers themselves and does not appear to pertain to the delivery terms.

Finally, ASEA argues that any discrepancies between its bid and the IFB should be interpreted in a light most favorable to ASEA because it was not allowed sufficient time to prepare its bid. As indicated, ASEA's protest that it did not have sufficient time to prepare its bid was untimely. Moreover, such a consideration is not relevant in determining the nonresponsiveness of ASEA's bid.

Our decision is reversed in part and the protest denied.

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General Counsel