



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pierce Manufacturing, Inc.
File: B-224007
Date: October 28, 1986

DIGEST

1. Even though protester's bid acknowledged amendment changing assumed award date on which solicitation based the required delivery date, contracting agency properly rejected protester's bid as nonresponsive since protester inserted unamended proposed award date in its delivery schedule and, therefore, was not legally bound to deliver in accordance with solicitation's required delivery schedule.
2. Where bid offers a delivery schedule deviating from the required delivery schedule, the deviation cannot be treated as a minor informality or corrected after opening, since delivery terms represent material requirements.
3. A nonresponsive bid may not be accepted, notwithstanding any savings it might represent to the government, since its acceptance would compromise the integrity of the competitive bidding system.

DECISION

Pierce Manufacturing, Inc., protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DABT60-86-B-0232, issued by the Training and Doctrine Contracting Activity-East, Fort Eustis, Virginia, for the lease, with option to purchase, of five pumper fire trucks.

We deny the protest.

The agency rejected Pierce's bid because it decided that Pierce had not committed itself to deliver the trucks within the required time. The solicitation contained delivery terms which required delivery on or before September 30, 1986. The solicitation provided a space for the bidder's proposed delivery schedule, and stated that "The delivery dates or specific periods above are based on the assumption that the

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Government will award by 4 Aug. 1986." It also said "[e]ach delivery date in the delivery schedule above, will be extended by the number of calendar days after the above date [the assumed award date], that the contract is in fact awarded."

Amendment No. 0001 to the solicitation was issued on July 23, extending the bid opening date from August 1 to August 4, and, among other things, changing the assumed award date from "04 August 1986" to "06 August 1986." The amendment did not change the September 30 delivery date. Pierce inserted in its bid its proposed delivery in the following manner:

"30 September 1986 provided they are ordered by 04 August 1986 as listed below:"

Pierce's bid, dated July 29, acknowledged the amendment, which changed the assumed award date to "06 August 1986." The agency rejected Pierce's bid as nonresponsive for failure to comply with the delivery schedule.

Pierce argues that its bid clearly showed its intent to reflect the agency's required delivery schedule. In this regard, the protester states that it acknowledged the amendment which changed the proposed award date from August 4 to August 6 and argues that the reference in its bid schedule to the August 4 date "as listed below" was subject to the change made by the amendment. In short, the protester maintains that its reference to the August 4 date listed in the solicitation was, like the date in the solicitation itself, changed to August 6 by the amendment.

The protester argues in the alternative that if we do not consider the reference to August 4 in its bid as changed by the amendment, then we should consider it a minor irregularity that can be waived or a clerical mistake that can be corrected.

We agree with the agency that the bid was properly rejected. The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an unequivocal offer to provide the requested items in total conformance with the material terms and conditions of the solicitation. Poly-chromic 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. ASEA Electric, Inc.--Reconsideration, B-218129.2, May 17, 1985, 85-1 CPD ¶ 565.

Here, Pierce stated in its bid that it would meet the required delivery date, if the award was made by August 4 as provided in the solicitation. The solicitation was, however, amended to change the proposed award date to August 6. While Pierce argues that its reference to the August 4 date "as listed below" incorporates the amended August 6 date, we think the bidder's insertion of August 4 creates a doubt whether it intended to stick with the original date or follow the amended August 6 date. We note in this regard that the amendment changing the proposed award date also contained changes to five other solicitation terms. Under these circumstances, it was not clear from the face of Pierce's bid whether it intended to conform with the solicitation as amended in all respects or with all of the terms changed by the amendment except for the proposed award date. Hence, the agency was required to reject Pierce's bid as nonresponsive since that firm would not be legally bound to make delivery by September 30 if the award were made after August 4. Balongas, S.A., B-215153, July 23, 1984, 84-2 CPD ¶ 86.

Moreover, Pierce's reference in its bid schedule to the August 4 proposed award date was not a minor informality or irregularity which could have been waived. A minor informality or irregularity is one that is a matter of form, rather than substance, or is such that it has only a negligible effect on price, quantity, quality or delivery. Federal Acquisition Regulation, 48 C.F.R. § 14.405 (1985). Pierce's insertion of the condition that award be made by August 4 before it would deliver by September 30 could result in delivery 2 days later than required. This would have more than a negligible effect on delivery, which is a material requirement. See United Partitions Systems, Inc., B-219587, Aug. 6, 1985, 85-2 CPD ¶ 137.

Pierce also contends that its reference to August 4 rather than August 6 is a clerical error apparent on the face of the bid, which may be corrected. A bid containing a delivery provision that does not conform with the solicitation's delivery requirements is nonresponsive and may not be corrected after bid opening even though the nonconformity may have been the result of a clerical error. Meyer Tool and Mfg., Inc., B-222595, June 9, 1986, 86-1 CPD ¶ 537.

Finally, the protester notes that the price of the next higher bid is substantially higher than its price. A non-responsive bid may not be accepted, notwithstanding any savings it might represent to the government, since such acceptance would compromise the integrity of the competitive bidding system. Kaydon Corp., B-214920, July 11, 1984, 84-2 CPD ¶ 41.

The protest is denied.

Harry R. Van Cleve

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