



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Winsar Corporation of Louisiana

File: B-226507

Date: June 11, 1987

DIGEST

Bid was properly rejected as nonresponsive where cover letter enclosed with bidder's acknowledgment of amendment to solicitation stated that bid was for acceptance within 30 days, whereas solicitation required 60-day bid acceptance period. It is irrelevant that bidder did not alter acceptance period stated on the solicitation cover page, or that bidder did not insert the shorter acceptance period in space provided in Minimum Bid Acceptance Period Clause since the clause only permits bidder to specify a longer acceptance period than is required by the solicitation.

DECISION

The Winsar Corporation of Louisiana protests the rejection of its low bid as nonresponsive and the award of the contract to Craig Taylor Equipment Company under invitation for bids (IFB) No. DAKF70-87-B-0011, issued by the Department of the Army, for a generator unit for use at Fort Greely, Alaska. Winsar contends that the Army improperly rejected its bid as nonresponsive for failure to comply with the minimum bid acceptance period required by the solicitation. We deny the protest.

The IFB included in Part IV, Section K, the Minimum Bid Acceptance Clause, as prescribed by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-16 (1985), which stated that a minimum acceptance period of 60 days was required. The clause also provided a space for the bidder to specify its bid acceptance period should the bidder choose to hold its bid open for more than the required 60 days.

By amendment 0001, dated January 15, 1987, the bid opening date was extended from January 16 to February 10, 1987. Although in the copy of Standard Form 33 (solicitation form) which Winsar signed, dated January 10, 1987, and returned to the contracting office, the protester did not indicate that it took exception to the 60 day acceptance period requirement, in an undated cover letter on Winsar letterhead

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accompanying its January 29 acknowledgment of the amendment the bidder stated: "We are pleased to quote on the following described equipment, for acceptance within thirty (30) days from this date."

(This statement was followed by a detailed description of an electric generator set with "standard" accessories and equipment.) Because the acceptance period stated in the cover letter was less than that required by the IFB, the contracting officer rejected Winsar's bid as nonresponsive, and on February 23, 1987, awarded the contract to the next low responsive bidder.

Winsar maintains that the cover letter accompanying its acknowledgment contained its standard commercial acceptance period, and that the letter was "submitted for clarification of technical specifications and is not an integral part of the contract." The protester also expresses the view that whether it offered an acceptance period of 30 or 60 days is a "moot point" since the Army awarded the contract on February 23, within 30 days of the date of Winsar's acknowledgment, which the cover letter accompanied.

To be responsive to a solicitation, a bid must show on its face at the time of bid opening that it is an unqualified offer to comply with all material requirements of the solicitation and that the bidder intends to be bound by the government's terms as set forth in the solicitation. Central States Bridge Co., Inc., B-219559, Aug. 9, 1985, 85-2 C.P.D. ¶ 154. A bidder's intention must be determined at the time of bid opening from all the bid documents, which include any cover letter or extraneous documents submitted with the bid, since such materials are a part of the bid for purposes of determining responsiveness. HBH, Inc., B-225126, Feb. 26, 1987, 87-1 C.P.D. ¶ 222; Eclipse Systems, Inc., B-216002, Mar. 4, 1985, 85-1 C.P.D. ¶ 267.

Thus, contrary to Winsar's expressed view, the cover letter that accompanied its acknowledgment of the amendment was "an integral part" of its bid and the legal implications of the letter with respect to the bid could not be ignored. The letter clearly limited acceptance of Winsar's bid to 30 days of the date of the cover letter and thereby qualified the bid.

Where a bidder qualifies its bid in a manner that serves to protect the bidder or reserve rights which are inconsistent with a material requirement of the IFB, the bid must be rejected as nonresponsive. FAR, 48 C.F.R. § 14.404-2(d) (1986); John C. Grimberg Co., Inc.--Request for

Reconsideration, B-218231.2, Apr. 26, 1985, 85-1 C.P.D. ¶ 478; Hewlett-Packard Co., B-216530, Feb. 13, 1985, 85-1 C.P.D. ¶ 193. The minimum acceptance period called for in a solicitation is a material requirement, compliance with which is required at bid opening for the bid to be responsive. Cardkey Systems, B-220668, Jan. 29, 1986, 86-1 C.P.D. ¶ 105; reconsidered, Mar. 12, 1986, 86-1 C.P.D. ¶ 243.

By restricting its minimum acceptance period to a period less than that required, Winsar's bid had the effect of modifying the IFB, which terms if accepted by the government would be prejudicial to other bidders who bid on the basis of the required 60-day acceptance period. Central States Bridge Co., Inc., B-219559, supra at 2. An IFB has a minimum acceptance period because bidders are to share the same business risks of leaving their bids open for acceptance by the government for the same amount of time. A bidder who was allowed to specify a shorter acceptance period would have an unfair advantage over its competitors. It would be able to refuse the award after its bid acceptance period expired should it decide it no longer wanted the award because of unanticipated cost increases, or extend its bid acceptance period after competing bids have been exposed. Central States Bridge Co., Inc., B-219559, supra.

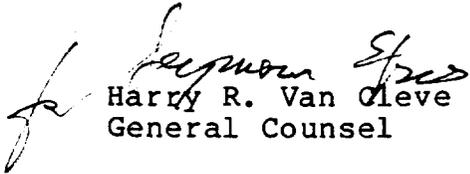
Further, the fact that the Army actually awarded the contract within 30 days of January 29--the date Winsar impliedly argues would have been the earliest effective date of the cover letter since it accompanied the January 29 acknowledgment--bears no relevance to the question of the responsiveness of Winsar's bid since bid responsiveness must be determined at the time of bid opening. See Peabody Myers Corp., B-213176, Mar. 13, 1984, 84-1 C.P.D. ¶ 295. Responsiveness is a matter of a bid's acceptability as submitted and opened. It cannot depend on the subsequent fortuity that the government may complete the selection process sooner than anticipated under the IFB. Trans World Maintenance Inc., B-216469, Dec. 6, 1984, 84-2 C.P.D. ¶ 634.

Winsar contends that its "tacit acceptance" of the terms and conditions of the acceptance period clause is evidenced by the fact that in the Standard Form 33 it did not take exception to the solicitation's 60-day acceptance period. The protester further contends that its intention to allow the Army a 60-day acceptance period as required by the solicitation is indicated by the fact that it left blank the space in Section K of the solicitation for the bidder's specification of the number of calendar days, other than what the solicitation required, for acceptance of its bid.

These contentions assume that the cover letter enclosed with the protester's amendment acknowledgment had no effect upon

the bid. As indicated above, we disagree with Winsar that the cover letter could be disregarded. At best, the inconsistency between what Winsar stated in the solicitation form containing its bid and what the company stated in the cover letter it later submitted renders the bid ambiguous as to the offered acceptance period and, nonetheless, non-responsive. Rice Services, Inc., B-218228.2, Oct. 7, 1985, 85-2 C.P.D. ¶ 384.

We conclude, therefore, that the Army properly rejected Winsar's bid as nonresponsive. The protest is denied.


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General Counsel