



The Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

Matter of: Washington Printing Supplies Inc.

File: B-227048

Date: July 10, 1987

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### DIGEST

1. Dismissal for failure to furnish agency copy of protest within 1 working day of filing at General Accounting Office (GAO) as required by GAO Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1986), is not warranted where agency is able to submit protest report on time.
2. It would not be appropriate to dismiss protest for failure to cite any supporting legal authority where the protest provides all the information essential to the protest.
3. Bid which took exception to warranty requirement in invitation for bids is nonresponsive, since, in order to be considered responsive, a bid must be an unequivocal offer to provide the exact thing described, in total conformance with the material terms of the solicitation, and warranty requirements are material.

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### DECISION

Washington Printing Supplies Inc. (WPS) protests the rejection of its bid submitted in response to invitation for bids (IFB) No. FERC-86-B-011, issued by the Federal Energy Regulatory Commission (FERC) for a 12 station signature collator with offset stacker and stitcher attachments. The IFB required a 1 year warranty on parts and workmanship and a 6 month warranty for service and labor.

We deny the protest.

FERC received four bids. The low bid was nonresponsive because it did not include a stitcher. WPS was the next low bidder. WPS included with its bid an additional form entitled "Quotation-Requisition For Supplies, Equipment, and Services." The quotation form included a description of the contract items, features and specifications. However, on page 2 of the quotation form the warranty provision deviated from that found in the IFB. The warranty provision stated:

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"Warranty: 90 Days Labor; 90 Days Parts." The quotation form also stated at the bottom: "ALL PROPOSALS ARE SUBJECT TO CHANGE/AMENDMENTS." The quotation, and an accompanying introductory letter, were signed by Brian C. Leonard. The bid was signed by Donald Mergler, vice president of WPS.

The WPS bid was found nonresponsive because the warranty provision included in the quotation form took exception to the IFB warranty provision. The contract then was awarded to the next low bidder. On April 17, 1987, WPS protested to our Office.

WPS claims that the quotation form included with its bid was not meant to confuse or override the sealed bid, as the form was boiler plate in nature and only attached as a "convenience factor." WPS also argues that Mr. Leonard did not sign the bid and that he, in effect, could not bind the company.

#### PROCEDURAL ISSUE

As a threshold matter, FERC contends that the protest is for dismissal under our Bid Protest Regulations which require that the contracting officer must receive a copy of the protest no later than 1 working day after the protest is filed with the General Accounting Office (GAO). 4 C.F.R. § 21.1(d) (1986). FERC notes that the protest was filed on April 17, but FERC did not receive a copy of WPS's protest until April 21. The purpose of the 1-day requirement is to prevent any delay that might hamper the ability of the contracting agencies to meet the 25-working day statutory deadline for filing protest reports with our office. 4 C.F.R. § 21.3 (c). While protests may be dismissed for noncompliance with this requirement, dismissal is not warranted in all circumstances. See Menasco, Inc., B-223970, Dec. 22, 1986, 86-2 C.P.D. ¶ 696.

In this case, on Friday, April 17, FERC was notified by GAO, in accordance with 4 C.F.R. § 21.3(a), that WPS had filed a protest. FERC received the WPS protest the following Tuesday, April 21. FERC delivered its report to our Office in a timely fashion. In the absence of a showing that the agency was prejudiced, and since WPS served FERC with its protest only 1 working day late, we do not think dismissal is appropriate. Hargis Constr., Inc., B-221979, May 6, 1986, 86-1 C.P.D. ¶ 438.

FERC also contends that WPS' protest should be dismissed because it failed to comply with our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4), which require a protester to include "a detailed statement of the legal and factual grounds of protest including copies of relevant documents."

We do not believe dismissal is warranted for this reason either. The purpose of the requirement for a detailed statement is to provide agencies the precise basis of protest so that they can provide our Office with a responsive, fully documented report on time. There is no need to dismiss a protest for failure to cite any legal authority or request specific relief where the protest otherwise provides all the information essential to the protest. CDI Marine Company, B-219934.2, Mar. 12, 1986, 86-1 C.P.D. ¶ 242. In this case, WPS gave the protest grounds (an allegedly misinterpreted warranty provision contained in a separate quotation form for which its bid had been rejected), a chronology of the course of events in question, and a request that we clarify or rectify the situation; the agency also was able to respond to the issue raised. Under these circumstances, dismissal is not appropriate.

#### BID RESPONSIVENESS

The sole remaining issue for our consideration is the responsiveness of WPS' bid. In its protest to this Office, WPS contends that the quotation form accompanying its bid was not intended to be part of the bid. Rather, WPS states that the clauses in question--"Warranty: 90 Days Labor; 90 Days Parts," and "ALL PROPOSALS ARE SUBJECT TO CHANGE/ AMENDMENTS"--were included as boiler plate statements only as a "convenience factor and not as an override to [the] solicitation." We conclude that the agency properly rejected WPS' bid as nonresponsive.

The question of responsiveness of a bid concerns whether a bidder has offered unequivocally to provide the requested items in total conformance with the specification requirements of the invitation. Spectrum Communications, B-220805, Jan. 15, 1986, 86-1 C.P.D. ¶ 49; Champion Road Machinery International Corp., B-216167, Mar. 1, 1985, 85-1 C.P.D. ¶ 253. For this reason, a bidder's exception to or qualification of an IFB's warranty requirements renders its bid nonresponsive and the defect cannot be waived as a minor informality. Genesis General Contracting Inc., B-225794, June 1, 1987, 87-1 C.P.D. ¶ \_\_\_\_\_; California Mobile Communications, B-223137, Aug. 20, 1986, 86-2 C.P.D. ¶ 203. Furthermore, a bidder's intention to be bound by the solicitation requirements and provide the requested items must be determined from the bid itself at the time of bid opening. See Franklin Instrument Co., Inc., B-204311, Feb. 8, 1982, 82-1 C.P.D. ¶ 105. Any extraneous documents submitted with a bid must be considered a part of the bid for purposes of determining the bid's responsiveness. See Free-Flow Packaging Corp., B-204482, Feb. 23, 1982, 82-1 C.P.D. ¶ 162.

In this case, the IFB required the contractor to warrant the equipment for one full year against defective parts and workmanship and 6 months on service and labor. WPS' bid contained a quotation which materially differed from the IFB--it shortened the warranty provision to the bidder's advantage.

At best, WPS' exception to a material provision in the IFB made its bid ambiguous because of the conflicting warranty statements, and it is well settled that an ambiguous bid in such circumstances must be rejected as nonresponsive. See Inscom Electronics Corp., B-225221, Feb. 4, 1987, 87-1 C.P.D. ¶ 116; Hirt Telecon Co., B-222746, July 28, 1986, 86-2 C.P.D. ¶ 121 at 2.

Although WPS now states that the form was boiler plate and only included as a "convenience factor," no such statement of this intent was attached to the bid at the time of its submission. The extraneous form was attached to the bid and must be considered a part of the bid, as noted above, for purposes of determining responsiveness. Since only material available at bid opening may be considered in making a responsiveness determination, WPS's protest statements concerning its intent cannot be considered in determining the responsiveness of its bid. HBH, Inc., B-225126, Feb. 26, 1987, 87-1 C.P.D. ¶ 222.

Finally, we find without merit WPS' argument that its quotation form statement should not have been considered part of its bid because the individual who signed the form, Brian C. Leonard, was not the person who signed the IFB. Both the cover letter and quotation signed by Mr. Leonard on behalf of WPS contain the company name and address pre-printed on the documents. As indicated above, the agency must consider any documents submitted with the bid in determining the bid's responsiveness. See Free-Flow Packaging Corp., B-204482, supra. Thus in, our view, FERC acted properly in considering as part of the bid the submissions signed by Mr. Leonard.

We find that FERC properly rejected WPS' bid as nonresponsive and we deny the protest.

  
for Harry R. Van Cleve  
General Counsel