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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: McLemore Pump, Inc.

File: B-230031

Date: January 27, 1988

## DIGEST

1. Protest that solicitation amendment allowed insufficient time to obtain a bid bond is an alleged impropriety in the solicitation; such a protest must be filed prior to the bid opening date to be considered.
2. Failure to furnish a bid guarantee with the bid requires the rejection of the bid as nonresponsive.

## DECISION

McLemore Pump, Inc. protests the award of contract under solicitation No. 8-SI-10-08800, issued by the Bureau of Reclamation, the Department of the Interior, for pumps.

McLemore alleges that the Bureau of Reclamation acted improperly by allowing insufficient time to obtain a bid guarantee or an irrevocable letter of credit from its bank between the time it received the amendment adding the bid guarantee requirement and the date set for bid opening. Furthermore, McLemore alleges that the Bureau of Reclamation abused its discretion by failing to accept McLemore's otherwise acceptable low bid because its bid bond arrived 5 days after the due date for its submission.

We dismiss the protest.

McLemore received the amendment to the solicitation on December 9, 1987. The amendment apparently added a requirement for a bid guarantee. The bid opening date was December 18, 1987. McLemore alleges that the 9 days between the time it received the amendment and the opening date was an unrealistically short period of time for a small company like itself to secure a bid guarantee bond.

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We will not consider the merits of this argument since any protest based upon an alleged impropriety in the solicitation which was apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1987). Knowing that 9 days was not enough time to secure a bid guarantee, McLemore should have requested an extension of the bid opening date or filed its protest before the date set for bid opening. This protest issue is therefore untimely and will not be considered.

When McLemore's bid guarantee was furnished, 5 days after it was due, the Bureau of Reclamation refused to accept it and rejected McLemore's low bid as nonresponsive. McLemore believes that the Bureau of Reclamation had discretion to consider its bid despite the fact that the guarantee was late, and that by failing to do so, it abused that discretion. McLemore refers specifically to Paragraph I.2.9 of Amendment No. 03 of the solicitation, which states in part:

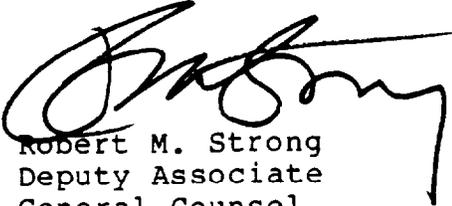
"Failure to furnish a bid guarantee in the proper form and amount, by the time set for the opening of bids, may be cause for the rejection of the bid." (emphasis added).

Failure to furnish a bid guarantee in accordance with the solicitation's terms requires the rejection of the bid as nonresponsive. Consolidated Installations Corp., B-202630, Apr. 20, 1981, 81-1 CPD ¶ 301. The statement in the bid guarantee requirement that failure to comply "may be cause for rejection" of a bid is just as compelling and material as if more positive language were employed. Id. The word "may" is used in the clause because there are limited regulatory exceptions to the requirement that a bid accompanied by an inadequate bid guarantee be rejected. The clause does not, however, give the contracting officer discretion to waive the bid guarantee requirement. See James C. Bateman Petroleum Services, Inc., B-228252, Oct. 5, 1987, 87-2 CPD ¶ 337. As a result, the Bureau of Reclamation had no discretion to waive the late receipt of McLemore's bid guarantee and under the circumstances was required to treat McLemore's bid as nonresponsive.

McLemore argues that the fact that it would save the Government money, that it uses motors acquired from a women owned business, and that its equipment is 100 percent American manufactured should offset the fact that its bid

guarantee was furnished late. McLemore's argument is without merit, however, since the public interest in maintaining the integrity of the competitive bidding system outweighs any advantages to the Government offered by violating the procurement regulations. Hannan Associates, Inc., B-226180, Feb. 20, 1987, 87-1 CPD ¶ 197.

The protest is dismissed.



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