



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: S.K. Enterprises Inc.

File: B-230379

Date: February 12, 1988

DIGEST

1. An amendment to the solicitation which alters the delivery date under the contract is material and a bidder's failure to acknowledge such amendment renders its bid nonresponsive.
2. A late acknowledgment of a material amendment may not be accepted as a late modification of an otherwise successful bid since the bid as originally submitted is nonresponsive.

DECISION

S.K. Enterprises Inc. protests the rejection of its bid as nonresponsive under solicitation No. DAAA08-87-B-0204 issued by the Department of the Army.

We dismiss the protest.

The Army rejected S.K.'s low bid as nonresponsive because S.K. did not acknowledge an amendment to the solicitation with its bid. S.K. argues that the Army should have waived the acknowledgment deadline because in every other regard its low bid was responsive.

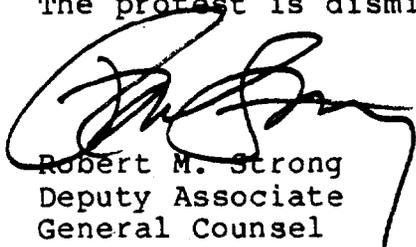
The failure to acknowledge a material solicitation amendment render's the bid nonresponsive and, thus, unacceptable. El Greco Painting and General Contractors Co., Inc., B-208215.2, Nov. 30, 1982, 82-2 CPD ¶ 492. The reason for this rule is that, absent such acknowledgment, the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amended solicitation. Rockford Acromatic Products Co., B-208437, Aug. 17, 1982, 82-2 CPD ¶ 143.

The amendment in question, among other things, shortened the period allowed for delivery. A change in the delivery date is material and, accordingly, the agency's determination

that S.K.'s bid was nonresponsive is correct. See Mar-Mac Precision Corp., B-214604, Aug. 13, 1984, 84-2 CPD ¶ 164.

Nonetheless, S.K. contends that the Army should have accepted its untimely acknowledgment as a late modification of an otherwise successful bid that makes its terms more favorable to the government, in accordance with Federal Acquisition Regulation (FAR) § 14.304-1(d) (1987 ed.). However, a late modification of a bid may only be accepted if the bid as originally submitted is responsive. Harrison Contracting, Inc., B-224165, Oct. 7, 1986, 86-2 CPD ¶ 402. Since S.K.'s bid as originally submitted failed to acknowledge a material amendment to the solicitation, it was not an "otherwise successful bid" within the context of the FAR. Although rejection of S.K.'s bid may result in additional cost to the government on this procurement, a nonresponsive bid may not be accepted, even though it would result in savings to the government since such acceptance would compromise the integrity of the competitive bidding system. See Harrison Contracting, Inc., supra.

The protest is dismissed. 4 C.F.R. § 21.3(f) (1987).



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