



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delta Scientific Corporation
File: B-233485
Date: November 23, 1988

DIGEST

1. A bid was properly rejected as nonresponsive where it offered delivery after the government's required delivery date even though the bidder's cover letter stated that the firm would meet all the requirements of the solicitation.
2. A solicitation clause allowing bidders to propose an alternative to the government's desired delivery date is not ambiguous where clause clearly stated that proposed time for delivery must be within the required period set forth in the solicitation.
3. A nonresponsive bid may not be corrected by the rules governing mistakes in bids.

DECISION

Delta Scientific Corporation protests the rejection of its bid under invitation for bids (IFB) No. DAKF48-88-B-0272 issued by the Department of the Army, Fort Hood, Texas.

We dismiss the protest.

The Army rejected Delta's bid as nonresponsive because the bid included a proposed delivery date of 120 days after receipt of notice of award, which exceeded the Army's required delivery within 90 days after receipt of notice of award. The Army's decision was based on Delta's completion of paragraph F.7 of the IFB, which states:

"(a) The Government desires delivery to be made within 60 days after receipt of notice of award.

"If the offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose a delivery schedule below, however, the offeror's proposed delivery schedule must not extend the delivery

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...period beyond the time for delivery in the Government's required delivery schedule as follows:

"The Government requires delivery to be made within 90 days after receipt of notice of award.

"(b) Offers that propose delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected. If the offeror proposes no other delivery schedule, the desired delivery schedule above will apply.

OFFEROR'S PROPOSED DELIVERY SCHEDULE

(to be completed by offeror)

ITEM NO.	QUANTITY	TIME
_____	_____	<u>120 days</u> "

Delta argues that it interpreted this paragraph to mean that while 90 days was required, the government would also consider any proposals which would change the required delivery date, even for a longer period of time, so long as the government's requirements were met. Delta contends that the contracting officer should have considered the cover letter Delta submitted with its bid before making the determination that the bid was nonresponsive. The cover letter stated ". . . we will be in full compliance and meet all aspects of the specifications and contract requirement with no exceptions." Thus, Delta maintains it proposed a delivery within 120 days while stating that it would meet the Army's 90-day requirement.

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. Winsar Corp. of Louisiana, B-226507, June 11, 1987, 87-1 CPD ¶ 585. Thus, a bid must be rejected if it varies from the terms and conditions of the solicitation or limits the firm's contractual obligations. HBH, Inc., B-225126, Feb. 26, 1987, 87-1 CPD ¶ 222.

In this case we believe that the Army's determination that Delta's bid was nonresponsive was proper. The IFB stated that bidders could offer a delivery schedule longer than the

desired 60 days, but that delivery must be within 90 days. Delta's offer of delivery in 120 days clearly did not meet the 90-day requirement and therefore made the bid nonresponsive.

While it is true, as Delta maintains, that a bidder's cover letter should be considered to determine the bidder's intention for purposes of determining responsiveness, see Winsar Corp. of Louisiana, B-226507, supra, a blanket statement of compliance in a bid which is otherwise noncompliant with a material requirement is not sufficient to make the bid responsive. See Joaquin Manufacturing Corp., B-228515, Jan. 11, 1988, 88-1 CPD ¶ 15. Accordingly, the statement in Delta's cover letter did not convert the noncompliant bid into a responsive one.

Delta further argues that paragraph F.7 of the solicitation contained a latent ambiguity. Delta believes that paragraph F.7 permits a bidder to propose an alternate delivery time, even one which extends the delivery period beyond the agency's required delivery schedule, even though the government's required delivery of 90 days was clearly stated. Delta contends that it reasonably interpreted F.7 differently from the Army, and therefore the IFB is ambiguous.

An ambiguity exists only where two or more reasonable interpretations of a solicitation are possible. After examining the language in F.7, we conclude that Delta's interpretation is not reasonable. The IFB permits a bidder to propose a delivery schedule longer than the agency's desired 60 days, but F.7 clearly states the proposed schedule "must not extend the delivery period beyond the time for delivery in the government's required delivery schedule" (emphasis added), which is stated as within 90 days after receipt of notice of award.

Moreover, bidders were warned that proposed delivery not within the required delivery period specified would be considered nonresponsive and rejected. We can see no basis for Delta's assertion that the Army would consider proposed delivery periods beyond that required. Delta's argument in fact contradicts itself, since Delta claims it interpreted F.7 to mean that while 90 days was required, the government would also consider any proposals which would change the required date, even for a longer period of time, so long as the government's stated requirements (i.e., 90 days) were met. Delta adds that it proposed a delivery within 120 days while stating that it would meet the Army's 90-day requirement. We cannot see any purpose in the agency suggesting that a bidder propose delivery after 90 days if the Army is

going to require delivery within 90 days anyway.
Accordingly, we find no ambiguity to exist.

Finally, Delta argues that if the contracting officer had considered Delta's cover letter as part of the bid, the contracting officer would have suspected a mistake and requested Delta, the low bidder, to clarify its bid. The delivery date could not be corrected after bid opening, however, because the rules governing mistakes in bid apply only to those errors that do not affect the responsiveness of a bid. Meyer Tool and Mfg., Inc., B-222595, June 9, 1986, 86-1 CPD ¶ 537.

The protest is dismissed.

Ronald Berger

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