



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Ramirez Company and Zenon
Construction Corporation

File: B-233204

Date: January 27, 1989

DIGEST

Procuring agency's rejection of protester's bid as nonresponsive is upheld where bid was accompanied by a cover letter which conditioned the bid upon acceptance within 30 calendar days and the solicitation stated that bids for less than 60 calendar days will be rejected. The fact that the protester did not insert a shorter period in the space provided on the bid document does not alter the nonresponsiveness of the bid. In these circumstances, the protester has no legal right to have the error corrected under the mistake in bid procedures.

DECISION

The Ramirez Company and Zenon Construction Corporation, a joint venture (Ramirez), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. N62470-88-B-8211, issued by the Naval Facilities Engineering Command, Norfolk, Virginia, for the construction of a National Guard Armory and Organizational Maintenance Shop in St. Croix, Virgin Islands. Ramirez's bid was rejected because it contained a cover letter that purported to propose a shorter acceptance period than required by the IFB. Ramirez contends that the cover letter contained an obvious clerical error which the Navy should have corrected pursuant to the mistake in bid procedures.

We deny the protest.

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The IFB was issued on August 8, 1988, and in Item No. 13D of Standard Form 1442 informed bidders that offers providing less than 60 calendar days for government acceptance after the date offers were due would be rejected. The form, in Item No. 17, provided a space for the bidder, if it desired, to specify a bid acceptance period longer than the required 60 calendar days.

Bids were opened on September 26. The Navy determined that the low bid was nonresponsive. Ramirez was the next low bidder and, as part of its bid package, furnished a cover letter that stated "[Ramirez] agrees that if this offer is accepted within 30 calendar days after the date of opening, to commence work on or before a date to be specified in written Notice to Proceed". In addition to reiterating some of the salient features of the bid, the letter stated that it formed part of the offer documents submitted. Since the letter proposed an acceptance period shorter than the minimum acceptance period required by the IFB, the Navy rejected the bid as nonresponsive and awarded the contract to the next low bidder.

Ramirez advises that the cover letter was included with its bid as a courtesy gesture to the Resident Officer in Charge of Construction and was intended to reaffirm the pertinent dates for contract performance and stipulations in the solicitation, rather than to supplant its formal bid containing Standard Form 1442. Ramirez states that the 30-day acceptance period reflected an obvious typographical error in which a three was mistakenly typed instead of a six. Therefore, Ramirez argues that the Navy was required to permit it to correct the error pursuant to the mistake in bid procedures, particularly as authorized by Federal Acquisition Regulation (FAR) § 14.406-2. That regulation provides that any clerical mistake apparent on its face in the bid may be corrected by the contracting officer before award, and gives that the obvious misdesignation of unit is an example of an apparent clerical mistake. Ramirez states that its actual intent for the bid acceptance period is contained in Standard Form 1442 in which it did not take exception to the 60 calendar day requirement, and asserts that this document should take procedure.

We find that the procuring agency properly rejected Ramirez's bid as nonresponsive. The cover letter, even though not intended to supplant any terms actually contained in Standard Form 1442, must be interpreted as an integral part of the bid submitted by Ramirez. The 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, since we find that such materials are

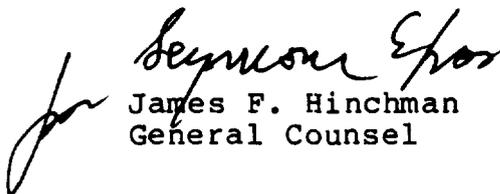
a part of the bid for the purpose of determining responsiveness. Winsar Corp. of Louisiana, B-226507, June 11, 1987, 87-1 CPD ¶ 585. Moreover, Ramirez's cover letter specifically stated that it was to be part of the submitted bid documents. Under these circumstances, the fact that Ramirez did not insert a shorter acceptance period on Standard 1442 is irrelevant. Id.

The minimum acceptance period called for in a solicitation is a material requirement with which the bid must strictly comply at bid opening in order to be considered responsive. Since Ramirez's bid, even if viewed in the most positive light, would have to be considered ambiguous, we find that the Navy properly rejected the bid as nonresponsive because in order to be responsive the bid must show on its face at the time of bid opening that it is an unqualified offer to comply with all the material requirements of the solicitation. Winsar Corp. of Louisiana, supra.

If we accepted Ramirez's post-award explanation of the alleged error in proposing the 30-day acceptance period, this would be prejudicial to the other bidders who bid on the basis of the required 60-day acceptance period. 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. Since Ramirez's bid is ambiguous, it would be gaining a competitive advantage of electing to decide whether to render its bid responsive after seeing the prices of the other bidders. Further, Ramirez could decide it no longer wanted the award because of unanticipated cost increases and refuse the award after the expiration of its shorter acceptance period, which the cover letter gives it the right to do.

Although Ramirez contends that the Navy was required to examine its bid for a mistake and then permit it to correct the alleged error as an apparent clerical mistake, the mistake in bid procedures cannot be used to allow a bidder to correct a mistake that would make its bid responsive to the solicitation. See FAR § 14.406-3.

The protest is denied.


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General Counsel