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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Newport Offshore Ltd.

File: B-234072

Date: February 1, 1989

DIGEST

1. Contracting agency properly determined protester's low bid to be nonresponsive where it did not comply with the requirement in the invitation for bids relating to the method of drydocking ships.

2. Protester's post-bid opening allegation that solicitation requirement relating to drydocking of vessels includes the use of marine railways is untimely filed and will not be considered since requirement was apparent in solicitation prior to bid opening.

DECISION

Newport Offshore Ltd. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 51-EANC-9-00015, issued by the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, for drydocking and repair services. NOAA rejected Newport's bid as nonresponsive because Newport, the low bidder, intends to use a marine railway for drydocking ships rather than a floating or graving drydock as required by the solicitation.

We dismiss the protest in part and deny it in part.

The relevant solicitation requirement being challenged by the protester provides as follows:

"In order to facilitate work on the Intermediate Depth Swath Survey System (IDSSS) installation in another item of these specifications, the ship shall be drydocked in

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a floating or graving drydock such that the top surface of the ship's HIPPY foundation plate is parallel, within one-half degree of arc, in both axes with the horizontal gravity plane." (Emphasis added.)

Newport argues that its bid is responsive to the IFB because this provision does not prohibit the use of a marine railway, and there are various other references in the IFB to a marine railway. We disagree with the protester and find that NOAA properly rejected Newport's bid as nonresponsive.

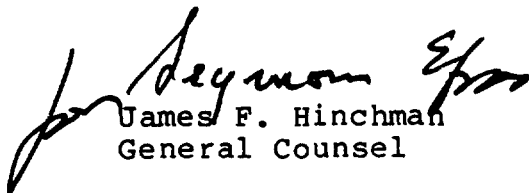
To be responsive, a bid must reflect an unequivocal offer to provide the exact product or service called for in the solicitation so that its acceptance will bind the contractor to perform in accordance with the material terms and conditions of the IFB. Community Metal Products Corp., B-229628, Jan. 15, 1988, 88-1 CPD ¶ 41. Here, the specification is clear on its face that the contractor is required to drydock the ship in a floating or graving drydock. There is no language to indicate or even suggest that NOAA intended to allow for the use of a marine railway to satisfy this requirement. Because Newport proposed to use a marine railway and not a graving or floating drydock as required by the IFB, NOAA properly determined protester's bid to be nonresponsive.

Protester's argument that, because other provisions in the IFB contain references to a marine railway it was not prohibited from using a marine railway, is without merit. The references to marine railways are contained in standard clauses and representations and a standard drydocking specification which simply provide additional requirements to be followed if a marine railway is permissible under the specific solicitation.

Finally, to the extent, that Newport now contends that the agency's needs can be satisfied by the use of a marine railway, the protest is untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), provide that protests based on alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to that date. Here, the IFB was clear on its face that the only method of drydocking allowed under the solicitation was the use of a floating or graving dock, and any attempt by

the protester after bid opening to challenge the agency's decision not to allow the use of a marine railway is untimely. See Fluid Systems, Inc., B-225880, Jan. 6, 1987, 87-1 CPD ¶ 20.

The protest is dismissed in part and denied in part.


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General Counsel