



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: General Welding, Inc.

File: B-236819

Date: December 8, 1989

DIGEST

1. Where a bid does not unconditionally commit the bidder to comply with the required date for contract completion, the bid is nonresponsive; the fact that the bidder signed the bid does not correct the ambiguity.
2. Bid offering an alternate product was properly rejected as nonresponsive where the agency determined the alternate product did not meet two requirements of the specifications; a mere assertion by the protester that its offered product does meet the characteristics in question does not show that the agency's determination is erroneous.
3. Bid properly found to be nonresponsive as submitted may not be changed after bid opening so as to make it responsive.

DECISION

General Welding, Inc., protests the rejection of its bid as nonresponsive under Bureau of the Census invitation for bids (IFB) No. 51-SO-BC-9-00019, issued for the removal of a deteriorated boiler from the Jeffersonville, Indiana, Federal Center and its replacement with a 500-horsepower fire-tube boiler, Cleaver Brooks model CB-500, or approved equal.

We deny the protest.

The IFB was issued on July 21, 1989, with bid opening scheduled for August 10. Because several bidders questioned the feasibility of completing performance by the original delivery date of October 20, the completion date was changed to November 1 by amendment No. 1 to the IFB.

Three bids were received at the August 10 opening. General's bid of \$116,000 was low. General's bid included the following notation below its price:

"Exception taken on completion date, because equipment delivery alternate Nov. 1st. 1989 completion date, exception taken on Boiler Manufacturer substitute superior Mohawk 2506."

After a review of General's bid, that firm was informed by letter of August 18 that its bid was rejected as nonresponsive because the bid indicated that General could not meet the IFB completion date and since an evaluation showed that the Mohawk 2506 boiler offered was too large and did not have the required turn down feature. The second low bid was also rejected as nonresponsive. On August 25 the award was made to Schardein Mechanical Contractors, the third low bidder, at its price of \$138,476.

In essence, General argues that its bid should have been accepted since by signing that bid it agreed to be bound by the IFB delivery requirements. The protesters states that it informed the agency after opening that it could meet the IFB requirements.

We think that General's bid was properly rejected as nonresponsive. First, we agree with the agency that the notation on General's bid which included the phrase "Exception taken on completion date" did raise a question as to whether General offered in its bid to meet the specified completion time. While it is true that generally by signing its bid a firm agrees to be bound by the IFB terms, that is not the case where the bid contains a contrary notation on its face. See Delta Scientific Corp., B-233485, Nov. 23, 1988, 88-2 CPD ¶ 516. The notation here created an ambiguity regarding General's agreement to meet the IFB's time for contract completion and therefore rendered the bid nonresponsive. Orbas & Assocs., B-228443, Jan. 7, 1988, 88-1 CPD ¶ 12. It was therefore properly rejected.

Moreover, the agency also determined that the alternate boiler offered by General did not meet two of the IFB's technical requirements relating to size and "turn down." Since the protester has offered no explanation as to how its boiler actually meets the requirements other than to say the boiler is acceptable, we have no basis upon which to object to the agency's conclusion in this regard. International Imaging Sys., B-224401, Sept. 15, 1986, 86-2 CPD ¶ 302.

Further, to the extent that the protester argues that its bid should have been accepted based on some post-bid opening statements, we point out that a bid which is nonresponsive may not be cured by post-bid opening explanations. Syllor, Inc., and Ease Chemical, B-234723 et al., June 6, 1989, 89-1 CPD ¶ 530.

In the alternative, General argues that even if its bid was nonresponsive the cause of its rejection was improper advice from the contracting agency. According to the protester, it was informed by a contract specialist that it could take exception to the completion date or offer an alternate boiler that could be installed by November 1st. The contract specialist denies that he told General that it could take exception to the IFB delivery requirement. He does, however, indicate that he did inform General that "an alternate product would be considered."

Even if we accept the protester's version of the conversation, we would still conclude that the rejection of the bid was proper. As we stated earlier, the agency had two independently valid grounds for rejecting the protester's bid as nonresponsive; the ambiguity as to the completion date and the technically unacceptable alternate boiler. While the alleged conversation concerns the first basis there is nothing even in the protester's version of the conversation which could reasonably lead the bidder to the conclusion that it could offer an alternate boiler that did not conform to the IFB specifications.

Most importantly, oral advice in these circumstances generally is not binding and a bidder relies on such advice with respect to solicitation requirements at its own risk. See Wallace Coast Machinery Co., B-235608, Sept. 15, 1989, 89-2 CPD ¶ 234.

Finally, the protester makes a number of arguments concerning the fact that it had post-bid opening discussions with the contracting officer and expressing concern over the awardee's ordering of supplies prior to announcement of the award. It seems to be the protester's view that this somehow tainted the procurement process. In view of the

fact that the protester's bid was properly rejected as nonresponsive, we fail to see the legal significance of these arguments.

The protest is denied.

for Seymour Egan
James F. Hinchman
General Counsel