



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Reid & Gary Strickland Company
File: B-239700
Date: September 17, 1990

R.W. Miller, Esq., Lathrop Norquist & Miller, for the protester.
Vincent S. Antonacci, Esq., Office of the Chief of Engineers, Department of the Army, for the agency.
William R. Purdy, Esq., Ott & Purdy, Ltd., for Carothers Construction, Inc., an interested party.
John Formica, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Bid for construction project properly was rejected as nonresponsive where notation on bid schedule, stating that the bidder had "allowed" \$500,000 for doors required by solicitation because it had not received prices from door suppliers, reasonably could be interpreted as indicating bidder's intent to offer other than a firm, fixed-price.
2. A notation included in bid which renders the bid nonresponsive cannot be waived or deleted on the basis of a post bid opening explanation that notation was included for informational purposes only since a nonresponsive bid cannot be made responsive after bid opening.

DECISION

Reid & Gary Strickland Company protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DACA56-90-B-0018, issued by the United States Army Corps of Engineers.

We deny the protest.

The solicitation, issued March 5, 1990, was for the construction of a Special Nuclear Weapons Staging Facility and Weapons Transfer Station in Amarillo, Texas. It required bidders to submit a base bid consisting of four

lump-sum bid items, and one additive item to be priced separately. Four bids were received, and at the opening on April 24, Strickland's total bid of \$12,461,000 was low. The next low bid was \$12,566,000. On its bidding schedule, Strickland's bid had the following hand-written notation:

"Sections 08317, 08318, 08319
We Did Not Receive A Bid For These
Doors And Have Allowed \$500,000 For Them."

The contracting officer reports that he was unable to determine the meaning of the notation, or its impact on the price, and he therefore determined that the bid was ambiguous and nonresponsive.

Strickland argues that its bid reasonably can only be read as an unequivocal offer to meet the requirements of the solicitation at a firm price of \$12,461,000. The protester contends that the notation was included solely for the purpose of informing the agency that while the protester had not received a bid for the doors, it had sufficiently allocated funds to cover their cost. Strickland also points to the bid bond it submitted, and argues that because the bid bond is not qualified as to its amount, it confirms that the bid price was firm. Strickland maintains that, in any event, the notation constitutes a minor informality or irregularity in its bid and as such the contracting officer should have waived it.

Responsiveness is determined as of the time of bid opening and involves whether the bid as submitted represents an unequivocal offer to provide the products or services as specified in the IFB so that acceptance of it would bind the contractor in all significant respects, including price. WN Hunter & Assocs., B-237168, Nov. 3, 1989, 89-2 CPD ¶ 424. A bid must be rejected as nonresponsive if it is not clear from the face of the bid what the government's total payment obligation would be upon acceptance of the bid. Hoover Allison--Request for Recon., B-224785.2, Mar. 6, 1987, 87-1 CPD ¶ 257.

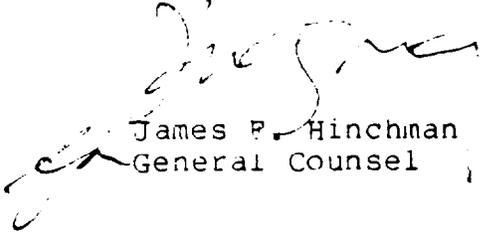
We agree with the agency that the notation on Strickland's bid that it had "Allowed \$500,000" for doors rendered the bid ambiguous and thus nonresponsive. While the bid can be read, as Strickland asserts, as providing a firm, fixed-price with a mere informational notation that the bidder expects that its costs for doors not to exceed \$500,000, it is also reasonable to read the notation as conditioning the bid on obtaining the doors for \$500,000, and that should the cost of the doors exceed the \$500,000 "allowed," additional payment by the government would be required. Under the

latter interpretation, the bid would be nonresponsive as it did not offer a fixed price as required by the IFB. See Harco Inc., B-189045, Aug. 24, 1977, 77-2 CPD ¶ 144. Where, as here, a bid on its face is subject to two or more reasonable interpretations, under one of which it will be found nonresponsive, such a bid is ambiguous and must be rejected. General Elec. Co., 65 Comp. Gen. 377 (1986), 86-1 CPD ¶ 223. Further, Strickland's post-bid opening explanation that the notation was included for informational purposes only, and was not intended to create any ambiguity, cannot be used to determine which of the two interpretations the bidder intended. Freedom Elevator Corp., B-223887, Dec. 7, 1987, 87-2 CPD ¶ 561.

We also disagree with Strickland's argument that the bid bond it submitted substantiates its contention that its bid can only be read as providing a firm price. The bid bond states that it is for "20 percent of amount of bid." We fail to understand how a bid bond which states only that it is for 20 percent of the bid price, without any mention of any specific dollar amount, substantiates the protester's claim that its bid price was not conditioned.

Finally, the notation in Strickland's bid cannot be waived or deleted as a minor irregularity since a nonresponsive bid cannot be made responsive after bid opening. Basil Equip. Corp., B-237335, Feb. 13, 1990, 90-1 CPD ¶ 187.

The protest is denied.


James P. Hinchman
General Counsel