

Miller



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Auto-X Inc.
File: B-241302.2
Date: February 6, 1991

Patricia Felser for the protester.
Millard F. Pippin, Department of the Air Force, for the agency.
Behn Miller and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where handwritten notation on cover of technical manual submitted as part of protester's bid merely indicates protester's apparent intent to comply with solicitation's installation specification at a future date, bid was properly rejected as nonresponsive, even though the protester allegedly relied on oral assurances received from the contracting officer that the notation rendered the bid acceptable since protester may not rely on oral advice inconsistent with the solicitation specifications.

DECISION

Auto-X Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. F09607-90-BA002, issued by the Department of the Air Force for automatic stove top fire extinguishers for the military family housing units at Moody Air Force Base (AFB).

We deny the protest.

The Air Force issued the IFB on April 3, 1990, with bid opening scheduled for May 4. On May 2, Auto-X protested to the contracting officer that the agency was conducting the solicitation as a de facto sole-source procurement; specifically, Auto-X contended that specification 3.4.1-- requiring the "[e]xtinguishing bottle to be located in the cabinet above the [stove's] hood to assure the bottle is not

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exposed to heat and flames"--rendered the solicitation unduly restrictive. Auto-X also argued that the IFB should contain a requirement limiting the installation time for each extinguisher unit to an hour or less.

By letter dated June 4, the contracting officer denied Auto-X's protest; because storage in the stove's hood causes the extinguishers to explode or malfunction as a result of proximity to the stove's heat, the Air Force engineers developed specification 3.4.1 to eliminate this storage hazard. The contracting officer also informed Auto-X that because the physical process of installation was not a requirement of the solicitation, there was no basis for including an installation time specification.

On August 24, the Air Force redesignated specification 3.4.1 as specification 4.1; as amended, the specification read:

"The cylinder containing the [extinguishing] agent will be installed away from the heat in the cabinet above the stove."1/

Additionally, bid opening was rescheduled for September 14.

At bid opening, although Auto-X was the apparent low bidder, its bid was rejected as nonresponsive since the descriptive literature submitted with the bid provided for the extinguisher's unit bottle to be installed on the hood of the stove rather than in the cabinet above the stove, as required by specification 4.1.

Auto-X maintains that because it could not prepare an updated schematic in time for bid opening which would illustrate the company's ability to install the fire extinguishers above the stove hood as required by specification 4.1, Auto-X contacted the contracting officer who then specifically advised the company that the following hand-written notation, which was subsequently made by Auto-X on the cover of its installation manual, would render its bid fully acceptable and therefore responsive:

"Schematic on UL piping and electric wiring for gas shutoffs to follow on updated installation manuals. Per Patricia Felser, President."2/

1/ The amendment also included diagrams explaining the specification.

2/ The notation was also signed by Patricia Felser.

Since Auto-X submitted its bid in reliance on these alleged oral instructions, Auto-X contends that the contracting officer's subsequent rejection of its bid as nonresponsive was improper.

To be responsive, a bid must represent an unequivocal offer to provide the exact thing called for in the IFB such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions at the time of bid opening. Adrian Supply Co., B-239681, Aug. 28, 1990, 90-2 CPD ¶ 170. Responsiveness is determined at the time of bid opening from the face of the bid documents. Forbes Mfg., Inc., B-237806, Mar. 12, 1990, 90-1 CPD ¶ 267. Where a bidder provides information with its bid that reduces, limits or modifies a solicitation requirement, the bid must be rejected as nonresponsive. Adrian Supply Co., B-239681, supra.

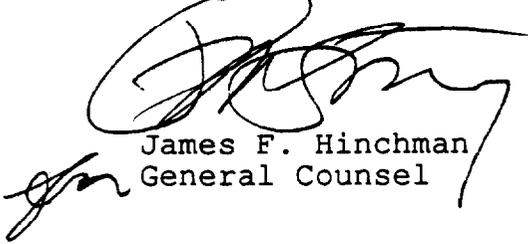
Here, there was nothing on the face of Auto-X's bid which bound the company to install the fire extinguishers in accordance with specification 4.1. Although Auto-X maintains that its handwritten notation was an unequivocal offer to install the fire extinguishers above each stove's hood, in fact, by referencing a forthcoming updated installation manual, Auto-X merely indicated its apparent intent to modify its bid at an unspecified, future date. Nothing in this promise to diagram its method of piping and wiring unequivocally bound the company to perform the fire extinguisher installation as required by specification 4.1. Accordingly, its bid as submitted was nonresponsive.^{3/}

Auto-X contends that its bid should be found responsive since it submitted its bid in accordance with the contracting officer's alleged oral instructions. The contracting officer denies giving Auto-X any oral instructions regarding the preparation of its bid. Even accepting the protester's contention, the solicitation incorporated by reference Federal Acquisition Regulation § 52.214-6, which requires bidders to request any explanation or interpretation of the solicitation in writing and cautions that oral explanations given before

^{3/} The Air Force states that to date it has not received the updated installation manual referenced in the protester's bid. In any event, such materials submitted after bid opening could not be considered since a nonresponsive bid cannot be made responsive after bid opening. Cuernilargo Elec. Supply, B-240249, Nov. 2, 1990, 90-2 CPD ¶ ____.

award of a contract will not be binding. In the face of such advice, a bidder relies on oral explanations--especially those that are inconsistent with the solicitation's express terms--at its own risk. Cuernilargo Elec. Supply, B-240249, supra. Here, the IFB clearly set forth the solicitation's installation requirements at specification 4.1; accordingly, Auto-X's claimed reliance on the contracting officer's allegedly contradictory oral assurances was misplaced. Id.

The protest is denied.



James F. Hinchman
General Counsel