



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Collins Siding Company

File: B-245732.2

Date: May 12, 1992

Joel S. Rubinstein, Esq., Sadur, Pelland & Rubinstein, for the protester.
Joseph M. Goldstein, Esq., Department of the Air Force, for the agency.
Tania L. Calhoun and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid offering to furnish the exact thing called for in the invitation for bids was properly found responsive notwithstanding post-bid opening notice from bidder that it intended to supply non-conforming item; whether a bid is responsive, and therefore eligible for award, must be determined from contents of the bid itself at bid opening, without reference to information submitted after bid opening.

DECISION

Collins Siding Company protests any award to the apparent low bidder, Adventure Group, Inc., under invitation for bids (IFB) No. F39601-91-B-0021, issued by the Department of the Air Force for window replacement in base housing on Ellsworth Air Force Base, South Dakota. Collins contends that Adventure Group's bid is nonresponsive because it submitted post-bid opening information qualifying its bid.

We deny the protest.

The IFB was issued on June 12, 1991, with an extended bid opening date of July 23. Of the eight bids submitted, the apparent low bidder was Adventure Group, with a bid of \$649,877; Collins was the apparent second low bidder, with a bid of \$764,631. In an August 7 letter responding to the agency's request for verification of its bid, Adventure Group stated it had made a mathematical error in calculating its bid; on August 14 it requested a modification of its bid from \$649,877 to \$707,603. In addition, Adventure Group verified the corrected amount of its bid subject to various conditions, particularly the acceptability of its window

submittal,¹ with regard to which it enclosed descriptive literature. On September 6, based on the information in these letters, the agency rejected Adventure Group's bid as nonresponsive.

Adventure Group protested the rejection of its bid to our Office on September 17. Upon review, the agency reversed its determination and advised Adventure Group that its bid was responsive. Adventure Group withdrew its protest. Adventure Group subsequently reasserted that it had made a mathematical mistake and again requested approval of its window submittal. While the agency permitted correction of the mathematical mistake, the window submittal was disapproved as not conforming to the specifications; the agency states that the acceptability of the windows and the other issues Adventure Group raised are still in dispute. Collins filed a timely protest in our Office upon learning that Adventure Group's bid would be considered responsive.²

Collins argues that Adventure Group's submission of information advising the agency of its intent to supply windows that did not meet the IFB specifications constituted a qualification of Adventure Group's bid, rendering it nonresponsive.

Collins correctly asserts that, 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. (Oscar Vision Sys., Inc., B-232289, Nov. 7, 1988, 88-2 CPD ¶ 450. However, only where a bidder provides information with its bid that reduces, limits, or modifies a solicitation requirement may the bid be rejected as nonresponsive. Id. Whether a bid is responsive, and therefore eligible for award, must be determined from the contents of the bid itself at bid opening, without reference to extraneous aids or explanations submitted after bid opening. (See Adrian Supply Co.--Recon., B-239681.2, Jan. 29, 1991, 91-1 CPD ¶ 79.

¹The other conditions concerned interpretations of the painting and peripheral repair requirements.

²The agency argues that the protest is premature because award has not yet been made. However, despite Collins' choice of words, Collins appears to be protesting the agency's finding that Adventure Group's bid was responsive. As a result, the protest is not premature.

Here, the IFB did not contemplate the pre-award evaluation of any specific product. Rather, bidders were merely required to unequivocally offer to perform, without exception, in accordance with all the material terms and conditions of the IFB. Adventure Group did not take exception to any of the IFB specifications in its bid, nor did the firm include any documents with its bid indicating an intent to reserve the right to deviate from the IFB's specifications. Consequently, Adventure Group's bid, at bid opening, did reflect an unequivocal offer to provide the exact item or service called for in the IFB and Adventure Group clearly and unambiguously bound itself to meet all the requirements of the solicitation. Since Adventure Group did not inform the agency of its intent to supply a nonconforming window until August 14, well after the bid opening date of July 23, its bid was properly found responsive.³ Id.

In its comments on the agency report, Collins argues that Federal Acquisition Regulation (FAR) § 14.404-2(d) applies in this case to allow rejection of Adventure Group's bid. Under that section, a bid must be rejected where the bidder attempts to impose conditions that modify requirements of the IFB or limit the bidder's liability to the government; Collins asserts that Adventure Group imposed such conditions and that its bid should be rejected. However, FAR § 14.404-2(a)⁴ provides only for the rejection of bids that, at the time of bid opening, were nonconforming to a material requirement; it does not override the fundamental rule that the responsiveness of a bid is determined on the basis of the bid itself at the time of bid opening. Id.

The protest is denied.


James E. Hinchman
General Counsel

³If it becomes clear, however, that Adventure Group misread the specifications and based its bid on furnishing windows that do not conform to the specifications, the contracting officer should take this into account in determining whether Adventure Group is responsible. See Edw. Kocharian & Co., Inc.--Request for Modification, 58 Comp. Gen. 516 (1979), 79-1 CPD ¶ 326.

⁴"Any bid that fails to conform to the essential requirements of the invitation for bids shall be rejected."