



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

Decision

Matter of: J.C.N. Construction Company, Inc.

File: B-250815

Date: February 23, 1993

Douglas L. Patin, Esq., Kilcullen, Wilson and Kilcullen, for the protester.
Mr. Daniel A. Buchanan for Maine Fire Protection Systems, an interested party.
Major Bobby G. Henry, Jr., and Captain Gerald P. Kohns, U.S. Army, for the agency.
Paul Britner, Esq., and David F. Engstrom, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

1. A hand-delivered bid given to an agency receptionist to time/date stamp and then immediately handed back to the bidder, who then hand-carries it to the bid opening room and submits it before the bid opening time, is considered submitted at the time of delivery at the bid opening room.
2. A bid containing additive bid items, most of which have been renumbered by the bidder, is responsive and eligible for award where the bid is low based on the base bid item and the additive item number which was not renumbered.
3. A bid including prices for both a welded tank and a bolted tank, where only a bolted tank was specified, is responsive since the bid clearly provided a price for the required item and inclusion of an alternative that does not meet specifications does not negate the responsiveness of the compliant offer.

DECISION

J.C.N. Construction Company, Inc. (JCN) protests the award of a contract by the National Guard Bureau of the Departments of the Army and the Air Force. The award was made to Maine Fire Protection Systems (Maine) under invitation to bid number DAHA17-92-B-0006 for the construction of a fire suppression system at the Air National Guard Facility at Bangor International Airport,

Bangor, Maine. The protester alleges that Maine improperly withdrew its bid before resubmitting it and that its bid was nonresponsive.

The protest is denied.

IMPROPER WITHDRAWAL

The agency had received five bids at the time of its bid opening at 1:00 p.m. (local time) on August 27, 1992, at the place designated in the solicitation, the U.S. Property and Fiscal Officer's conference room at Camp Keyes, Augusta, Maine. According to the record, Mr. Daniel Buchanan, Maine's president, entered the building shortly after 12:30 p.m. and handed his bid packet to a receptionist at the information desk. The bid was contained in a manila envelope that was sealed and taped. The receptionist time/date stamped the packet at 12:39 p.m. and handed it back unopened to Mr. Buchanan, who then hand-carried it about 100 feet to the bid opening room and submitted it, sealed and taped, just before bid opening.

The protester argues that the return of the bid package to Maine after it was stamped by the receptionist, without requiring Maine to sign a receipt for it, constituted an improper withdrawal of the bid in violation of Federal Acquisition Regulation (FAR) § 14.303(b). That provision states that a bid may be withdrawn by the bidder if, before bid opening, the identity of the person withdrawing the bid is established and that person signs a receipt for the bid.

The agency argues that Maine's bid was not withdrawn before the bid opening, since the "momentary physical transfer of an envelope containing a bid package to a government employee does not constitute effective delivery." The agency agrees that ideally the person at the desk should have transported the bid envelope to the bid room herself or have had another employee transport the bid there. As for the time/date stamp, the agency points out that there was no requirement that a hand-carried bid be separately time/date stamped, so long as it is delivered to the place of bid opening prior to the time specified. In Maine's case there is no question that the bid was submitted at the place of bid opening prior to 1:00 p.m.

We agree with the agency. A bid must be submitted so that it is received in the office designated in the IFB not later than the exact time set for opening of bids. FAR § 14.302(a). The time a hand-carried bid is considered submitted is determined by the time the bidder relinquishes control of the bid to the government. Manuel Tony Lucero, B-228425, Dec. 8, 1987, 87-2 CPD ¶ 566; Chestnut Hill Construction, Inc., B-216819, Apr. 18, 1985, 85-1 CPD 443.

The FAR provides that, if available, a statement of the date and hour of receipt shall be included in the contracting office's files for each late bid, modification of a bid or withdrawal of a bid. FAR § 14.304-4.

In this case, the designated place for bid opening was the conference room. As the agency states, the receptionist should have either directed Mr. Buchanan to the bid opening room without stamping the bid, or kept the bid and arranged to have it taken to the bid opening room by an agency employee. Nonetheless, we do not believe this brief exchange between Mr. Buchanan and the agency's receptionist qualifies as relinquishment of control as to constitute submission of the bid.¹ Therefore, there was no withdrawal of the bid.

RESPONSIVENESS

Maine's bid contained four items that form the basis of JCN's contention that Maine's bid was nonresponsive. These are: Maine's bid included extraneous notations renumbering the additive bid items (ABIs); it listed prices for both a welded and a bolted storage tank for one item, although the IFB requested bids only for a bolted storage tank; there was a discrepancy between the total of the per unit price and the extended price for one item (38 doors); and the bid did not state the total cost of the ABIs or the base bid plus the ABIs.

Mr. Buchanan states that he only renumbered the ABIs in Maine's bid to match the numbering in the specifications and did not intend to reprioritize the items; that he included the price of the welded tank gratuitously because it would save the government money; and that the discrepancy between the total of the unit price and the extended price for the doors reflected a discount from the supplier if he purchased all 38 doors at one time.

The test for responsiveness is whether the bid, when read as a whole, constitutes an unequivocal offer to perform the contract in accordance with the material terms of the IFB. The Ryan Co., B-238932, June 13, 1990, 90-1 CPD ¶ 557. We find no basis here to conclude that Maine's bid was nonresponsive.

¹While JCN postulates various hypothetical reasons why Maine may have wished to retain its bid until the last minute, Maine could have done so without first having its bid stamped.

Concerning Maine's renumbering of ABIs, the solicitation requested a base bid plus separate bids on eight ABIs listed as A-H and concurrently numbered 1-8. The solicitation stated in pertinent part as follows:

"(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

"(2) The low offeror shall be the Offeror that--

"(i) is otherwise eligible for award; and

"(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive items that provide the most features within the funds determined available.

"(3) The Contracting Officer shall evaluate all bids on the basis of the same additive or deductive items.

"(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and

"(ii) Add that next item if an award may be made that includes that item and is within the available funds.

"(b) The Contracting Officer will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if--

"(1) It is in the best interest of the Government;

"(2) Funds are available at the time of awarded; and

"(3) The low offeror's price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror."

In this case the agency determined that the amount of the funds available for the project was \$1,615,000. Only Maine and JCN bid less than \$1,615,000 for the base bid.

In submitting its bid Maine had not renumbered ABI number 1, but it had crossed through the item numbers on ABIs 2-7 and renumbered them as 7, 4, 5, 2, 3 and 6, respectively. JCN argues that this changed the priority of those items and therefore rendered Maine's bid nonresponsive. As noted above, Maine states that it only renumbered the ABIs to match their numbering in the ABI specifications, and did not intend to reprioritize them.

Regardless of Maine's intention, its renumbering of ABIs 2-7 could not have affected the bid evaluation, since it was the low bidder without reference to ABIs 2-7. Maine submitted a base bid of \$1,414,316 and a bid for ABI number 1--which Maine did not renumber--of \$54,550, which together totaled \$1,468,866, leaving \$146,134 of the available funds for application to other ABIs. JCN's base bid was \$1,564,000, and its bid for ABI number 1 was \$41,750, which together totaled \$1,605,750. This left only \$9,250 of available funds for application to additional ABIs. JCN's bid for the second ABI (\$9,700), or its bid on any other ABI, would have put its bid over the \$1,615,000 available for the project.

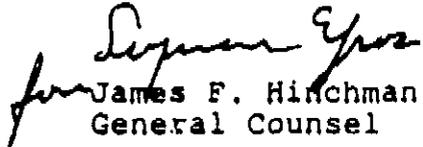
As noted, there was no question regarding Maine's base bid or its bid for additive item number 1. Regardless of the numbering of the additive items in Maine's bid, Maine's bid was low in accordance with the solicitation clause quoted above. The Haskins Co., B-227898, Sept. 21, 1987, 87-2 CPD ¶ 285. Therefore, under the clause, the contracting officer could award any other ABIs for which funds were available in any order to Maine, notwithstanding Maine's renumbering of the ABIs.

Maine's bid prices for both the welded tank and the required bolted tank also did not render its bid nonresponsive. While JCN argues that the two bids gave Maine the option to decide which tank it would provide, we think it is clear that Maine was simply offering alternatives to the agency and was not reserving to itself the right to decide what tank would be furnished. Since the offer of the bolted tank clearly was responsive, the inclusion of an alternative offer that did not meet specifications did not make the overall bid nonresponsive. See, e.g., P&N Constr. Co., Inc., 56 Comp. Gen. 328 (1977), 77-1 CPD ¶ 88.

As to the discrepancy between the unit price and the extended price for the doors, we note that Maine was the low bidder using either figure. When the low bid contains such a discrepancy, the agency may still award the contract to that bidder. NJS Development Corp., 67 Comp. Gen. 529 (1988), 88-2 CPD ¶ 62.

Finally, Maine's failure to total its bid did not make the bid nonresponsive. Where prices are offered on all line items, a bidder's failure to total the items does not make the bid nonresponsive. Burnside-Ott Aviation Training Center, Inc., B-228937, Nov. 6, 1987, 87-2 CPD ¶ 461.

Accordingly, the protest is denied.


for James F. Hinchman
General Counsel