



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

Decision

Matter of: A.I.A. Costruzioni S.p.A.
File: B-259175
Date: March 6, 1995

Manlio D'Urso, Esq., for the protester,
Paul M. Fisher, Esq., Diane D. Hayden, Esq., and Karen L. Borell, Esq., Department of the Navy, for the agency.
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where a solicitation provided that the only acceptable form of bid guarantee was a cashier's check, the agency properly rejected a bid that furnished a bid bond, but not a cashier's check, as the bid guarantee.

DECISION

A.I.A. Costruzioni S.p.A. protests the rejection of its bid under invitation for bids (IFB) No. N62470-91-B-1202, issued by the Department of the Navy. A.I.A. contends that the agency improperly found that the bid bond that A.I.A. submitted with its bid did not satisfy the bid guarantee requirement set forth in the solicitation.

We deny the protest.

The IFB was issued on August 26, 1994, to solicit bids for construction of a child development center at the U.S. Naval Air Station at Sigonella, Sicily. A separate page at the beginning of the text of the solicitation contained the following language:

"YOUR BID MUST BE ACCOMPANIED BY A BID GUARANTEE IN THE FORM OF A CASHIER'S CHECK."¹

When the three bids received were opened on October 3, A.I.A.'s bid was low. Unlike the other two bidders, however, A.I.A. had not submitted a cashier's check with its bid. Instead, it had enclosed a bid bond as its bid

¹The upper case appears in the original.

guarantee. The agency rejected the bid for failure to enclose a cashier's check.

A.I.A. concedes that it did not satisfy the IFB requirement for submission of a cashier's check, but argues that its bid should nonetheless have been accepted. We find the argument without merit.

A.I.A. disputes the need for the requirement for a cashier's check and contends that a bid bond offers adequate protection to the government. In particular, the protester argues that the government will lose the benefit of A.I.A.'s low bid by insisting on compliance with the cashier's check requirement. The agency explains that the contracting activity at issue routinely requires cashier's checks as the sole acceptable bid guarantee because of difficulties encountered in determining the reliability of local insurance companies and bonds.²

We do not address the merits of this allegation because it is untimely. The protester is actually arguing that the IFB was defective due to the provision mandating use of a cashier's check as the bid guarantee. Under our Bid Protest Regulations, an alleged apparent defect in an IFB must be protested prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1994). Thus, in order to be timely, the challenge to the cashier's check requirement had to be raised in a protest filed with our Office before bid opening on October 3.

A.I.A. also suggests that the solicitation was ambiguous with regard to the form of the required bid guarantee, since there is a reference elsewhere in the IFB to a bid bond. To the extent that A.I.A. sees an ambiguity in the IFB in this regard, the ambiguity was patent, that is, evident from the language of the solicitation. Patent ambiguities are governed by the same timeliness rule covering all deficiencies apparent on the face of a solicitation, and must be protested prior to bid opening. See General Elec. Co., 72 Comp. Gen. 519 (1992), 92-2 CPD ¶ 159. Consequently, if there was an ambiguity in this regard, A.I.A. was required to raise it before bid opening.

Here, however, there was no ambiguity. The paragraph in which bid bonds are mentioned expressly states that the bid guarantee shall be in the form stipulated in paragraph 10; that paragraph, in turn, repeats the language quoted above,

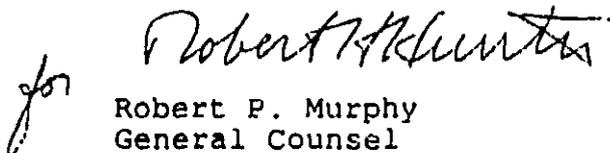
²Our Office has noted before that cashier's checks offer many advantages over bid bonds. See Castle Floor Covering, 70 Comp. Gen. 530 (1991), 91-1 CPD ¶ 510.

requiring submission of a cashier's check. Accordingly, there was no ambiguity in the IFB regarding the requirement for submission of a cashier's check.

A.I.A. claims that, prior to bid opening, it sent a written request to the agency asking whether a bid bond would be acceptable in lieu of a cashier's check and received an oral response from a contract specialist indicating that a bond would be acceptable; the agency denies that such a conversation took place. In any case, such alleged oral advice, if given, could not bind the government, since it contradicted the unambiguous language of the solicitation. See Douglas M. Andrews, B-218687, May 17, 1985, 85-1 CPD ¶ 571. Indeed, A.I.A. now concedes that if the agency intended to relax the requirement for submission of a cashier's check, it was required "to provide a written answer to [A.I.A.'s] question and provide the same information to all the parties concerned."

In addition, A.I.A. argues that the difference between a cashier's check and a bid bond is a minor informality that should have been waived. The protester points to the situations listed in the Federal Acquisition Regulation (FAR) § 28.101-4, where the contracting officer is directed to waive noncompliance with a solicitation requirement for a bid guarantee.³ None of the situations listed at FAR § 28.101-4 is germane here, however, and FAR § 28.101-4(a) provides that, except for those enumerated situations, "noncompliance with a solicitation requirement for a bid guarantee requires rejection of the bid." Accordingly, the agency properly declined to treat A.I.A.'s failure to submit a cashier's check as a minor informality that could be waived.

The protest is denied.


 Robert P. Murphy
 General Counsel

³The situations are enumerated at FAR § 28.101-4 and include circumstances such as "[o]nly one offer is received" or "[a]n otherwise acceptable bid bond is erroneously dated or bears no date at all."