

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

61004

FILE: B-186180

DATE: June 17, 1976

MATTER OF: James E. McFadden, Inc.

4/98422

DIGEST:

Protest based upon allegation that failure of low bidder to submit construction progress schedule with bid, as required by IFB, is matter of bid responsiveness is denied in light of GAO precedent holding similar failure to be matter of bidder responsibility and may be furnished subsequent to bid opening.

By telegram dated March 25, 1976, counsel for James E. McFadden, Inc. (McFadden), protested award to any other bidder pursuant to invitation for bids (IFB) BM-P-76-28 issued on February 4, 1976, by the United States Mint, Philadelphia, Pennsylvania, for construction of a new entrance and exit and renovation of adjacent interior areas of the Philadelphia Mint. At bid opening on March 17, 1976, the following three bids were received: Brandolini Corp. (Brandolini), \$62,000; McFadden, \$67,000; and Enrico Roman, Inc., \$97,913.

The basis for McFadden's protest is Brandolini's failure to submit a "schedule of construction progress to completion" as required by amendment 2 to the solicitation, issued March 3, 1976. Counsel for McFadden urges that the failure to submit the required schedule renders McFadden's bid nonresponsive.

The contracting agency advises that "[t]he purpose of the chart [progress schedule] was to assure us that the bidder had properly planned the work to assure completion within the required completion schedule * * *" and not to bind the bidder to the completion dates proposed in the schedule. In view of the purpose of the schedule and in view of the mandatory date for completion of the project (70 days from notice to proceed) contained in the IFB, the contracting agency urges that Brandolini's failure to include the schedule is a matter of bidder responsibility rather than bid responsiveness. Thus, the question before us is whether Brandolini's failure to include the required schedule goes to the matter of bid responsiveness or bidder responsibility. Award of the contract is being withheld pending our decision in this matter.

Our Office has consistently held that:

"* * * where the requirement for the submission of data is for the purpose of determining the capacity or responsibility of a bidder rather than whether the property or services offered conform to the Government's needs as stated in the solicitation, the failure of the bidder to submit data in accordance with the solicitation's data submission requirement is not fatal to the consideration of its bid, inasmuch as a bidder's capacity or responsibility may be determined on the basis of information submitted after the bid opening. * * *"
Western Waterproofing Company, Inc., B-183155, May 20, 1975, 75-1 CPD 306.

In B-168396, February 2, 1970, we considered an almost identical question to that currently before us. That case involved an IFB for construction and repair of a national forest trail which required, inter alia, the bidder to submit a plan of construction consisting of a time chart or proposed schedule of completion with the bid. We held that the schedule required by the IFB was a matter of bidder responsibility rather than bid responsiveness since it related to the bidder's ability to perform as opposed to his obligation to perform in conformance with detailed specifications and drawings.

We believe that our holding in B-168396, supra, is controlling here. Thus, Brandolini's failure to include the required progress schedule with its bid goes to the matter of bidder responsibility rather than bid responsiveness. As such, Brandolini may properly submit the required data after bid opening. Western Waterproofing Company, Inc., supra.

Counsel's analogy to solicitations requiring bidders to include lists of prospective subcontractors (which we have determined to be a matter of bid responsiveness; see, e.g., Pitman Construction Company, Inc., B-183077, April 25, 1975, 75-1 CPD 262) is distinguishable on the ground that such a requirement is intended to eliminate post-award "bid shopping" by prime contractors for lower priced subcontractors. Thus, the intent of such clause is to bind prime contractors to those lists of subcontractors submitted with their bids. In this case, the successful bidder will be bound only by the specifications and time limits for completion of the project set forth in the IFB, not by the dates set forth in the progress schedule, as counsel contends.

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For the above-stated reasons the protest is denied.

R. F. Kettner
Deputy Comptroller General
of the United States