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J. Pease
Proc I

DECISION



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

FILE: B-187614

DATE: November 9, 1976

MATTER OF: Key Power Systems, Inc.

DIGEST:

Procuring activity properly rejected low bid as nonresponsive where company quotation form attached to bid of low bidder stated that delivery would be "60 days after receipt of written contract" and IFB specifically required delivery "60 days after date of contract" since bid imposed a condition which differed materially from terms of solicitation.

Key Power Systems, Inc. (Key), protests the rejection of its low bid and the subsequent award of a contract to another bidder under invitation for bids (IFB) AMC 7T-7, issued by the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), Atlantic Marine Center, National Ocean Survey, Norfolk, Virginia.

The IFB, issued on August 19, 1976, solicited bids for one 150-KW AC diesel generator. Key states that its bid of \$15,317 was the lowest received at the September 10, 1976, bid opening. However, by letter dated September 29, 1976, NOAA advised Key that the bid was nonresponsive because of the submission of its Quotation No. 2366 (incorporated as part of the bid) which specified that delivery would be made 60 days after "receipt of written contract" while the solicitation required delivery 60 days "after the date of the contract." NOAA noted the bid was rejected pursuant to the provisions of Federal Procurement Regulations § 1-2.404-2 (1964 ed. amend. 121).

The IFB advised bidders that delivery was desired within 30 days but required within 60 days of date of the contract (emphasis supplied). We note that bidders were specifically warned that bids offering proposed delivery under terms or conditions not within the 60-day required delivery period would be rejected. In this regard, bidders were placed on notice of how the 60-day period would be computed by the following language on page 3 of the IFB:

"Attention is directed to paragraph 1.0 (d) of the Solicitation Instructions and Conditions of the Invitation for Bids, which provides that a written

award mailed or otherwise furnished to the successful bidder results in a binding contract. Any award hereunder, or a preliminary notice thereof, will be mailed or otherwise furnished to the bidder the day the award is dated. Therefore, in computing the time available for performance, the bidder should take into consideration the time required for the notice of award to arrive through the ordinary mails. However, a bid offering delivery based on a date of receipt by the contractor of the contract or notice of award (rather than contract date) will be evaluated by adding the maximum number of days normally required for delivery of the award through the ordinary mails. If, as so computed, the delivery date offered is later than the delivery date required in the solicitation, the bid will be considered non-responsive and rejected."

Key had written 60 days (without qualification), on the appropriate place designated by the IFB, as the time within which delivery would be completed. Therefore, Key asserts that it should have been allowed (after bid opening) to clarify the proposed delivery period indicated by the language in the cover letter (i.e., the September 8, 1976, Quotation No. 2366) submitted with the bid.

Our Office has held that a bid may be considered for award only if as submitted it complies in all material respects with the terms of the invitation. It is a basic principle of formally advertised procurements that the contract awarded to one bidder must be on the same terms under which all other bidders responded. Only those deviations which are immaterial and do not go to the substance of the bid so as to prejudice the rights of other bidders may be waived. We have held that deviations from solicitation requirements with respect to delivery terms are material and such bids must be rejected as nonresponsive. See 43 Comp. Gen. 813 (1964).

Although Key may have intended to conform to the IFB by making delivery within 60 days from the date of contract award, its bid must be evaluated on the conditions which Key imposed at bid opening by the September 8, 1976, cover letter. Since the date that Key "received" the contract could have extended its required delivery period more than 60 days from the date of award, Key's bid was nonresponsive.

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With respect to any savings that could have been realized by an award to Key, we have stated that the strict maintenance of the integrity of the competitive bidding system is infinitely more in the public interest than obtaining a pecuniary advantage in a particular case by violation of the rules. 52 Comp. Gen. 604, 607 (1973).

For the foregoing reasons, the protest of Key Power Systems, Inc., is denied.


Acting Comptroller General
of the United States