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DECISION



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

FILE: B-191184

DATE: July 21, 1978

MATTER OF: Premier Electric Supply, Inc.

DIGEST:

Bid offering warranty ending 12 months after shipment is not responsive to invitation seeking warranty ending 1 year after acceptance of goods.

Premier Electric Supply, Inc. (Premier) has submitted a complaint concerning the award of contract No. CQ-870 to B & S Electric Supply Company, Inc. (B & S) by the Metropolitan Atlanta Rapid Transit Authority (MARTA). MARTA is a recipient of Federal funds from the Urban Mass Transportation Administration (UMTA), Department of Transportation, under Capital Grant Project No. GA-03-0008. Contract CQ-870 was solicited pursuant to that grant, and UMTA's participation in the cost of the project is 80 percent. Our review is undertaken pursuant to 40 Fed. Reg. 42406 (1975).

On September 19, 1977, MARTA released the Contract Documents for procurement of subway lights under contract CQ-870. It contained the invitation for bids (IFB), general conditions, technical provisions, and several forms and exhibits. All provisions of those documents, as well as referenced materials and subsequent modifications, were specifically included as a part of the contract. (Contract Spec. Book, General Conditions, Paragraph 1.2.)

At bid opening on October 18, 1977, Premier was low bidder, followed by B & S. When B & S expressed concern that some handwritten notes attached to Premier's bid constituted exceptions to the IFB, MARTA's staff determined that Premier's notes did not materially qualify the bid. Subsequently B & S protested to UMTA, which determined that Premier's

bid was nonresponsive. MARTA therefore awarded the contract to B & S. Premier complains to this Office that Premier should have been awarded the contract.

One of Premier's bid notes (note (2)) stated that "warranty ends 12 months after shipment." (emphasis original) while paragraph 34 of the IFB stated:

"The supplier warrants that all goods, equipment and supplies delivered under this contract shall be free of latent defects not discoverable by reasonable inspection at the time of delivery, for 1 year after acceptance by the Authority * * *." (Emphasis added.)

Premier argues that its note was added merely for clarification. It believes paragraph 34 can be understood to say that the warranty period begins only when MARTA accepts the completed project in which the fixtures are to be installed. In Premier's opinion, note (2) clarifies the invitation's provision that the warranty begins on the date of shipment of the completed light fixtures which, it argues, is substantially the same date as the date of delivery. Premier thinks acceptance, as used in the Contract Documents, refers to the time of delivery of the fixtures to the construction site. Since Premier argues that shipment is the same date as delivery, and delivery the same date as acceptance, it concludes that note (2) does not take material exception to MARTA's requirements.

It is clear to us, however, that MARTA sought a warranty that would end one year after its acceptance of the lights. Premier offered a warranty that would end one year after its shipment of the lights. Paragraph 1.2 of the General Conditions in the Contract Documents defines acceptance as:

"the act of an authorized representative of the Authority, by which the Authority assumes ownership of existing and identified supplies or equipment tendered * * * as partial or complete performance of the Contract on the part of the Contractor."

Furthermore, the General Conditions provide that "acceptance * * * of the supplies shall be made as promptly as practicable after delivery * * *." (Paragraph 31(c), emphasis added.) Thus, the Contract Documents envision receipt by MARTA of the lights, and thereafter an affirmative act of acceptance before the warranty begins. On the other hand, Premier's offered warranty would be effective before MARTA receives the goods, and without any affirmative action at all on MARTA's part.

We have held that a bidder's exception to an IFB's warranty clause causes its bid to be nonresponsive. 45 Comp. Gen. 273 (1965). See also B-154972, October 8, 1964. Here, Premier's note (2) constitutes an exception to the invitation because it offers a substitute warranty which ends sooner than that sought by MARTA. Consequently, Premier's bid could not be evaluated on the same basis as bids of its competitors who complied with the Contract Documents. Accordingly, we concur with UMTA that Premier's bid was nonresponsive and properly rejected.

In view of our conclusion that note (2) rendered Premier's bid nonresponsive, we find it unnecessary to consider the effect of the other notations to its bid.


Deputy Comptroller General
of the United States