

DECISION



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

15446 *Order*
TRANS
[Protests of Bids Rejection as Nonresponsive]

FILE: B-199445.4; B-199445.5 DATE: November 17, 1980

MATTER OF: Robert E. Derecktor of Rhode Island, Inc.;
Marine Power & Equipment, Co., Inc. *DLG 05505*

DIGEST:

Bidders' failure to insert number in space provided for indication of offered bid acceptance period does not render bids nonresponsive where IFB contained standard provision that bid would be considered open for acceptance for 60 days unless bidder indicated otherwise in space provided, with asterisk centered in space with footnote to another IFB provision requiring bids to be open for at least 90 days, since asterisk and cross-referencing had effect of incorporating 90-day acceptance period into standard provision, to which bidder committed itself by signing bid.

(This decision is in response to the suspension of proceedings by the United States District Court for the District of Rhode Island in a suit filed by Robert E. Derecktor of Rhode Island, Inc. (Derecktor), Civil Action No. 80-0445, pending receipt of our opinion in related protests filed in our office by Derecktor and Marine Power & Equipment Co., Inc. (MP&E), which intervened in the suit. Derecktor's low bid and MP&E's second low bid under Coast Guard solicitation CG-011738-A to construct nine cutters were rejected as nonresponsive because of the firms' alleged failure to offer to keep the bids open for the bid acceptance period stipulated in the invitation.) *DLG 05510*
The contract was awarded to Tacoma Boatbuilding Co. (Tacoma), the third low bidder.

(Although more than one issue has been raised by the protests, the court has asked us for a decision limited to the narrow issue presented by the rejection of the bids as nonresponsive.)

012968 113773

We believe that the two low bids were improperly rejected for failure to offer the required minimum acceptance period.

FACTS

Page 1 of Standard Form (SF) 33, "Solicitation Offer and Award," which was the first page of the invitation, provided:

"In compliance with the above, the undersigned agrees if this offer is accepted within * calendar days (60 calendar days unless a different period is inserted by the offeror) * * * to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule. *CAUTION - See subsection C-21."

All but the asterisk in the space provided and the caution were preprinted. Subsection C-21 stated:

"Bids offering less than 90 days for acceptance by the Government from the date set for opening will be considered nonresponsive and will be rejected."

Bids were opened in June 1980, with the following results:

Derecktor	\$349,530,719
MP&E	\$380,854,103
Tacoma	\$391,882,517
Avondale Shipyards, Inc.	\$407,496,208
Alabama Dry Dock & Shipbuilding Co.	\$417,752,891
Bath Iron Works Corporation	\$427,037,689

Derecktor and MP&E, as well as Avondale Shipyards, Inc., failed to insert an acceptance period in their bids, which therefore were rejected as nonresponsive because in the

Coast Guard's view the SF 33 language quoted above meant that the two bids properly could be viewed as offering an acceptance period of only 60 days.

GENERAL DISCUSSION

The failure of a bidder to offer at least the bid acceptance period required by a solicitation normally renders the bid nonresponsive. The reasons are two-fold. First, a bid offering less than the required period is not an offer that meets the Government's minimum needs. Second, a bidder which offers a shorter period than that specified gives itself an advantage over other bidders in that its risk is less and it has the option after bid opening to decline award after expiration of its bid or extend its acceptance period if it desires award. See Hemet Valley Flying Service Co., Inc., B-191390, May 8, 1978, 78-1 CPD 344 and cases cited therein. Thus, we have held in a number of decisions that where bidders were advised by standard language that the bid acceptance period would be a certain number of days unless the bidder inserted a different period in the space provided, and the solicitation stated elsewhere that bids offering less than a number of days greater than that "base" number would be rejected as nonresponsive, a bid which specifically offered less than the required period or had no entry in the space provided properly was rejected as nonresponsive. See, e.g., 49 Comp. Gen. 649 (1970); 47 Comp. Gen. 769 (1968); 46 Comp. Gen. 418 (1966). We nonetheless did recommend that in such circumstances a cross-reference to the required minimum acceptance period provision be made in the standard provision. See 46 Comp. Gen. supra.

Our position was amplified in our decision in 52 Comp. Gen. 842 (1973), which contained bid acceptance provisions almost identical to those in the instant case, except that they were not cross-referenced in any way. There, 10 of the 13 bidders responding to three solicitations left blank the space on the SF 33 for indicating a bid acceptance period of other than 60 days, and their bids were deemed nonresponsive for failure to comply with the 90-day bid acceptance period. We stated:

" * * * where an invitation contains language specifying a bid acceptance period and, another

separate provision located elsewhere in the invitation sets forth a minimum bid acceptance period, the two provisions should be cross-referenced in such manner as to specifically direct bidders' attention to the fact that insertion of a shorter period will cause the bid to be rejected. * * *

* * * * *

" * * * the Government has the initial responsibility of stating what is required in reasonably clear fashion. Communication of the minimum bid acceptance period under the instant solicitations * * * was clearly inadequate, as exemplified by the overwhelming number of bidders who obviously either failed to appreciate the 90-day requirement or failed to take proper steps to establish responsiveness to that requirement.

"We have observed that a sense of fairness and impartiality should imbue the Federal procurement effort. These solicitations reasonably must be viewed as having contained a trap to ensnare the average bidder into a state of non-responsiveness as to the bid acceptance period imposed. We must assume that only a grossly misleading invitation would have caused almost all bidders--who expended considerable time and money to compete for the Government's business--to fail to hold their bids open as required."

We recommended that the two solicitations under which award had not been made be canceled and the procurements resolicited with clear bid acceptance period requirements stated.

(Since rendering that decision, we have considered situations involving a "standard" acceptance period and a greater one noted elsewhere in the invitation in which (1) the provisions were cross-referenced but the bidder inserted a bid acceptance period less than that required, e.g., Hemet Valley Flying Service Co., Inc., supra, and (2) the provisions were not cross-referenced and the bidder made no entry at all.) E.g., Hild Floor Machine Co., Inc., B-196419, February 19, 1980, 80-1 CPD 140.

In the first situation, we found that the bid properly was rejected as nonresponsive because bidders were clearly advised by the cross-reference as to the minimum required bid acceptance period and the bidder offered a shorter acceptance period. In the second situation, we essentially followed the holding in 52 Comp. Gen., supra, recommending that the invitation be canceled and readvertised with properly cross-referenced provisions (except that award was recommended for certain line items since the low bidder for those items complied with the required acceptance period and no other bidder thus would be prejudiced by the award).

DECISION

We recognize that where no alteration is made by the procuring activity in the "standard" bid acceptance period language of the SF 33, the 60-day period is by the provision's terms automatic, and thus the language contemplates the insertion by the bidder of a different bid acceptance period if the bidder intends other than 60 days. Intercontinental Manufacturing Company, Incorporated, B-180784, June 4, 1974, 74-1 CPD 300.

However, once the agency alters the provision by inserting a reference to a period other than 60 days, we believe that the 60-day language no longer is operative but is modified by whatever requirement is otherwise imposed. For example, we have recognized that the agency may strike out the "60" in the SF 33 and insert a different period if necessary to meet its needs. See 47 Comp. Gen. 769, 772 (1968). Just as a bidder need not also itself insert that other period in such a situation in order to be bound to that period, we do not believe a separate insertion by a bidder is necessary where, as here, the agency in effect makes an insertion by means of an asterisk cross-referencing to another provision which modifies the SF 33 acceptance period. Thus, we believe the asterisk in the SF 33 provision and the cross-reference to the 90-day provision effectively negated the 60-day language of the SF 33 provision and in its place imposed a 90-day bid acceptance period to which bidders committed themselves by signing their bids, without any need for them to specifically insert "90" on the SF 33.

Consequently, we view the bids of Derecktor and MP&E as offering acceptance periods of 90 days. Therefore, we

find the Coast Guard's rejection of those bids as non-responsive to the 90-day requirement to be improper.

The protests are sustained. In light of the limited nature of the court order and the ongoing judicial proceedings, we are not making a recommendation for corrective action, as that ultimately is for determination by the court.

Harry R. Van Cleave

For the Comptroller General
of the United States