

DECISION

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

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FILE: B-213176**DATE:** March 13, 1984**MATTER OF:** Peabody Myers Corporation**DIGEST:**

1. Where a bidder makes an unqualified offer to comply with the solicitation's terms, the bid is responsive and acceptance binds the bidder to comply with those terms. Whether the firm in fact does so involves a matter of contract administration for which the agency is responsible.
2. A bid that offers a bid acceptance period less than that required in the solicitation is nonresponsive and the fact that award was made within the shorter period is irrelevant.

Peabody Myers Corporation protests the award of a contract to M.C.I.E., Inc. under invitation for bids No. N62472-83-C-6975, issued by the Naval Training Center, Great Lakes, Illinois for a 3-year lease with option to purchase of a truck-mounted vacuum-pressure jet catch basin and sewer cleaner. Peabody, the second low bidder, contends that M.C.I.E.'s bid was nonresponsive because M.C.I.E. intends to supply equipment which deviates from the specifications in several respects. For example, the protester contends the equipment to be provided by M.C.I.E. does not meet the specification requirements for minimum water pressure or usable capacity. We deny the protest.

The solicitation, which included detailed specifications for the equipment, merely required that a bidder insert prices and the principal manufacturer of the item to be provided; there was no requirement that it identify the specific model of the equipment to be supplied. Peabody's bid included only its prices and a letter indicating it will supply equipment made by Super Products which will have a 16 cubic yard collector body as required by the specifications. It contained nothing indicating that the equipment it intends to furnish does not meet the specifications.

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The concept of responsiveness involves whether the bidder submitted an unqualified offer to comply with all the material terms of the invitation. Gas Turbine Corporation, B-210411, May 25, 1983, 83-1 CPD 566. Where a bidder has made such an offer, the bidder is legally bound to comply with those terms upon the government's acceptance of the bid. Tenavision, Inc., B-209261, December 15, 1982, 82-2 CPD 533. Before making an award, the contracting officer must find the bidder responsible, that is, capable of meeting the contract's requirements at the bid price and having a satisfactory record of performance, integrity and business ethics. See Defense Acquisition Regulation §§ 1-902 and 1-903. The contracting officer's signing of the contract constitutes an affirmative responsibility determination, which we will not review absent a showing of possible fraud on the part of procuring officials or that the solicitation contained definitive responsibility criteria which allegedly were not applied. Environmental Laboratory of Fayetteville, Inc.--Reconsideration, B-205593.2, January 13, 1982, 82-1 CPD 32. Whether the contractor subsequently fulfills, or intends to fulfill, its contractual obligations by furnishing items that comply with the specifications is a matter for the contracting agency in the administration of the contract and does not affect the validity of the award. Tenavision, Inc., supra. In other words, the concept of responsiveness involves only the question of whether the bid sufficiently responds to the invitation, and not whether the bidder has the capability or inclination to comply with the offer that the bid represents.

Since M.C.I.E.'s bid contains nothing to indicate that its offered equipment will not meet the requirements, we have no basis to question the award to M.C.I.E.

Further, we agree with the agency's position that it could not, in any event, make award to Peabody as its bid specified that it was "good for a period of 30 days from bid opening" while the solicitation provided that bids must remain available for acceptance for 60 days. A bidder's failure to meet a solicitation requirement that a bid remain available for acceptance by the government for a prescribed period renders the bid nonresponsive. The fact that the government actually awarded the contract within the time period contained in the bid (here within 11 days) is not relevant to the bid's responsiveness. Ames Construction Co., B-210578, February 14, 1983, 83-1 CPD 156.

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The protest is denied.

for *Milton J. Fowler*
Comptroller General
of the United States

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