

DECISION



29284

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

FILE: B-216026

DATE: September 10, 1984

MATTER OF: Southwest Boat Corporation

DIGEST:

1. A provision in an invitation which requires that a bid remain available for acceptance by the government for a prescribed period of time in order to be considered for award is a material requirement, and a bid that is ambiguous as to whether it represents an unequivocal offer to meet such a requirement is nonresponsive.
2. The authority of an agency to permit correction of bids is limited to bids that are responsive to the invitation.

Southwest Boat Corporation protests the rejection of its bid as nonresponsive under solicitation DTCG24-84-B-10118, issued by the U.S. Coast Guard. Southwest's bid was rejected because the bid allowed an acceptance period of 30 days, whereas the IFB requires a minimum acceptance period of 60 days. We deny the protest.

The protester argues that its bid should be construed as offering the government 30 days in addition to the required 60 days for a total of 90 days. Southwest also contends that because the Coast Guard had scheduled contract performance to start a week after bid opening, the 60-day minimum acceptance period is irrelevant and the failure to offer 60 days is only a minor deviation. Finally, the protester asserts that it intended to offer a 90-day acceptance period and should be permitted to correct its bid under Federal Acquisition Regulation (FAR), § 14.406-3, 48 Fed. Reg. 42,180 (1983) (to be codified at 48 C.F.R. § 14.406-3).

Concerning the correct interpretation of the protester's bid, Southwest indicates that the minimum acceptance period clause, as completed by the firm with the entry of the number "30," read:

"(c) The Government requires a minimum acceptance period of 60 calendar days.

. . .

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement.

The bidder allows the following acceptance period: 30 calendar days.

(e) A bid allowing less than the Government's minimum acceptance period will be rejected."

Southwest says it thought that by specifying 30 days in paragraph (d) it was agreeing to 30 days in addition to the required 60 days.

We find no merit to Southwest's position. The completed clause plainly refers to an acceptance period of only 30 days; an entry of "90" instead of "30" would have been the logical way to offer a 90-day period. At best, we believe the bid was ambiguous in that even if it can be read as establishing Southwest's asserted intention to offer a total of 90 days for acceptance, it also reasonably can be read as reserving to Southwest the option to refuse award if the bid is not accepted within 30 days. Under this second reading, the bid is nonresponsive. Allstate Guards and Security Services, Inc., B-213284, Nov. 16, 1983, 83-2 CPD ¶ 576.

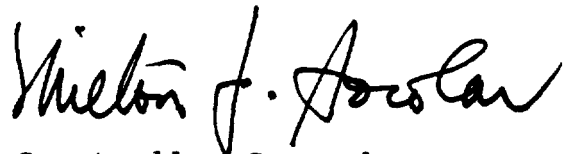
A provision in a solicitation that requires a bid to remain available for acceptance by the government for a prescribed period of time in order to be considered for award is a material requirement, Hemet Valley Flying Service Co., Inc., B-191390, May 8, 1978, 78-1 CPD ¶ 344. Moreover, a bid that is ambiguous with respect to whether it represent an unequivocal offer to comply with a material requirement must be rejected as nonresponsive. See Singleton Contracting Corp., B-202646, Aug. 4, 1981, 81-2 CPD ¶ 90. In this respect we further point out that a bidder may not explain the meaning of

its bid after bid opening, because to permit such action would be tantamount to granting an opportunity to submit a new bid. Delora Haidle, B-194154, April 6, 1979, 79-1 CPD ¶ 243.

We also reject Southwest's argument that its failure to offer the minimum acceptance period is a minor deviation. Although the Coast Guard may have hoped to award a contract and to begin work quickly, it could not guarantee that difficulty would not be encountered. It protected itself by requiring a minimum acceptance period of 60 days. To waive this requirement after bid opening would prejudice bidders who complied with the requirement and who may have reflected the risk of a 2 month delay in their bid prices. See Hemet Valley Flying Service Co., Inc., supra; see also Peabody Myers Corporation, B-213176, March 13, 1984, 84-1 CPD ¶ 295 (holding that the fact that award is actually made within the reduced time for acceptance stated in the protester's bid is irrelevant).

Finally, Southwest's bid may not be corrected. Southwest's failure to include the required acceptance period goes to the responsiveness of its bid. The authority to permit correction of bids is limited to bids that, as submitted, are responsive to the invitation. FAR, § 14.406-3, 48 Fed. Reg. 42,180.

The protest is denied.

A handwritten signature in black ink, reading "Milton F. Fowler". The signature is written in a cursive, flowing style.

Acting Comptroller General
of the United States