

DECISION



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

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FILE: B-216469

DATE: December 6, 1984

MATTER OF: Trans World Maintenance Inc.

DIGEST:

Agency properly rejected as nonresponsive a bid offering a 60-day bid acceptance period rather than the 90-day minimum period required by the solicitation.

Trans World Maintenance Inc. (TWM) protests the rejection of its low bid for exterior painting and repair under invitation for bids (IFB) No. DACA83-84-B-0242 issued by the Army Corps of Engineer (Corps). The bid was rejected as nonresponsive because TWM provided a 60-day bid acceptance period rather than the minimum 90-day period required by the IFB.

TWM asserts that, despite the IFB requirement for a 90-day bid acceptance period, all bidders were aware from the IFB that award was contingent on the availability of funding in the 1984 fiscal year, and that the Corps intended to award this contract within the 20 days from bid opening to the end of the fiscal year to avoid resolicitation in fiscal year 1985. TWM also points out that in fact funding was available prior to the end of the fiscal year. TWM concludes that the 90-day period was superfluous after the initial 20-day period for which TWM was bound and award to TWM would have been proper during this period.

We deny the protest.

We consistently have held that an IFB requirement that a bid remain available for acceptance by the government for a prescribed period of time to be considered for award is a material requirement. Bridgewater Construction Corp., B-214187, Feb. 14, 1984, 84-1 C.P.D. ¶ 201. A failure to comply with such a requirement renders a bid nonresponsive

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and ineligible for consideration for award regardless of whether award is made within the shorter acceptance period. Ames Construction, Inc., B-210578, Feb. 14, 1983, 83-1 C.P.D. ¶ 156.

To hold otherwise would unfairly permit the bidder, after the expiration of the time it set for bid acceptance, to accept the contract or, if intervening circumstances, such as unanticipated cost increases made acceptance unattractive, to refuse the contract. On the other hand, bidders complying with the required acceptance period are bound by the prices bid for the time stated for acceptance by the IFB. Bridgewater Construction Corp., B-214817, supra.

Essentially, TWM argues that the Corps intended to, and could have, awarded this contract within the shorter period bid by TWM and thus the failure to bid a 90-day bid acceptance period was waivable as a minor informality. However, we have rejected essentially this same argument in prior decisions. In this connection we have stated that the fact that an award is made within a period shorter than the bid acceptance period required of bidders or, as in this case, it could have been made during the shorter period, is not relevant to the question of the bid's responsiveness. The purpose of requiring a particular bid acceptance period is to insure the government adequate time after bid opening for bid evaluation and other preaward processing. See, for example, Ames Construction, Inc., B-210578, supra. However, responsiveness is a matter of a bid's acceptability as submitted and opened. It cannot depend on the subsequent fortuity that the government completes the selection process sooner than anticipated by the invitation as issued.

The firm's bid price reflects the bidder's limitation of its risk through the offer of a shorter acceptance period than its competitors offered in their proper responses to the IFB. See Hild Floor Machine Co., Inc., B-196419, Feb. 19, 1980, 80-1 C.P.D. ¶ 140. Thus, even if we assume that the Corps may have anticipated award within the 20 days prior to the end of the fiscal year, this does not alter the materiality of the acceptance period requirement.

Milton J. Dowler

Acting Comptroller General
of the United States