

DECISION



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

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FILE: B-216862

DATE: January 31, 1985

MATTER OF: North Park Village Homes, Inc.

DIGEST:

1. A statement in descriptive literature accompanying a bid providing that specifications are subject to change provides a bidder with an option to deviate from the solicitation requirements after award and is a material deviation rendering the bid nonresponsive where there is nothing else in the bid indicating that such statement was not intended to affect the bidder's obligation under its bid.
2. Where solicitation does not impose a specific license requirement, agency may make award without regard to whether bidder is licensed under local law.

North Park Village Homes, Inc. protests the rejection of its bid under solicitation No. R3-01-84-066 issued by the Forest Service for premanufactured housing units for the Apache-Sitgreaves National Forests. North Park's low bid was determined to be nonresponsive because of a legend on its descriptive literature, and award was made to the second low bidder, Commercial Concepts Company. We deny the protest in part and dismiss it in part.

The solicitation required that bidders submit with their bids "complete descriptive literature, specifications, and floor plans(s) of the unit(s) they proposed to furnish."

North Park offered units manufactured by Kaufman & Broad Home Systems, Inc., and included with its bid descriptive literature from the Kaufman & Broad sales brochure. The manufacturer's brochure contained the following caption: "Because of continuing progressive

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product improvements, prices and specifications are subject to change without prior notice." The descriptive literature submitted by Commercial Concepts contained a similar legend, but it had been crossed out and initialed by the company's president. In addition, Commercial Concepts inserted the following language: "STANDARD SERIES SPECIFICATIONS ARE USED EXCEPT WHERE GOVERNMENT'S SPECIFICATIONS DIFFER. THIS BID RESPONSE MEETS ALL OF THE GOVERNMENT'S SPECIFICATIONS. NO DEVIATIONS HAVE BEEN TAKEN!"

The contracting officer decided that the inclusion of the legend in the descriptive literature furnished by North Park indicated that a firm bid had not been submitted and that the bidder reserved the right to change specifications and/or price after the contract was awarded. He accordingly found the bid submitted by North Park to be non-responsive and awarded the contract to Commercial Concepts.

North Park argues that the manufacturer's brochure was not part of its bid, and that the legend indicating that prices and specifications were subject to change without notice pertained only to dealers. North Park notes in this regard that its bids on past procurements were accepted even though they contained literature with a similar legend. The protester further contends, presumably in the alternative, that Commercial Concepts did not comply with the solicitation requirements by crossing out the legend in its descriptive literature. North Park maintains that the mere striking of the legend did not mean that the legend was not part of Commercial Concepts' bid. The protester concludes that either its bid was responsive or that the bid of Commercial Concepts was nonresponsive. We disagree.

The manufacturer's brochure clearly was part of North Park's bid. The solicitation required that each bidder include descriptive literature, specifications, and floor plans of the units which it proposed to furnish. Where descriptive data is required to be supplied for use in bid evaluation, the data is part of the bid submission and must be considered in determining if the bid is responsive. Washex Machinery Corp., B-214591.2, Sept. 25, 1984, 84-2 CPD ¶ 352.

We have generally held that the reservation in descriptive literature of the right to alter specifications renders a bid nonresponsive. IFR, Inc., B-203391.4, Apr. 1, 1982, 82-1 CPD ¶ 292. Where, however, it is reasonably clear from the face of the bid that such a provision was not intended to reserve a right to change the offered product or to deviate from any material requirement, bid rejection is inappropriate. IFR, Inc., supra.

In order to determine whether the legend in fact improperly reserved to the bidder the right to change the item it offered, we must examine the bid as a whole. Here, although the homes North Park is offering are not manufactured by it, but by Kaufman & Broad, there is nothing in North Park's bid such as a cover letter explaining that North Park is offering units from stock or already manufactured units which meet all of the specification requirements. See, for example, Burley Machinery, Inc., 55 Comp. Gen. 592 (1975), 75-2 CPD ¶ 411. Consequently, we conclude that the uncontradicted legend on the literature submitted not only reserved the manufacturer's right to make changes to the units it supplies to its dealers, but also acted to grant North Park the right to supply units with characteristics other than those listed in the descriptive literature. Therefore, we believe that North Park's bid was properly rejected as nonresponsive. Big Joe Manufacturing Company, B-182063, Nov. 14, 1974, 74-2 CPD ¶ 263. The fact that the agency may in the past have erroneously accepted bids containing such a legend, of course, does not justify repeating that error here.

Since Commercial Concepts deleted the clause from its descriptive literature, we see no reason, despite the protester's argument to the contrary, to view it as part of Commercial Concepts' bid.

Finally, North Park contends that the bid opening date was improperly extended from September 20, 1984, to September 24 and complains that Commercial Concepts did not apply for its dealer's license until after bid opening. The contention regarding bid opening is clearly untimely under our Bid Protest Procedures as North Park did not raise it until November 13, almost 2 months after the bid opening

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date. 4 C.F.R. § 21.2(b)(1) (1984). Regarding North Park's license, since the solicitation here did not impose a specific requirement regarding an Arizona dealer's license, the contracting officer was free to make award without regard to whether the bidder was licensed under local law. Olson and Associates Engineering, Inc., B-215742, July 30, 1984, 84-2 CPD ¶ 129. We thus dismiss both of these contentions.

We deny the protest in part and dismiss it in part.

for *Seamus Egan*
Comptroller General
of the United States