

DECISION



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

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FILE: B-218054 **DATE:** February 8, 1985
MATTER OF: Siemens-Allis, Inc. APT 6000

DIGEST:

1. Agency properly rejected late modification from bidder where initial bid offered a 60-day bid acceptance period rather than the 90-day minimum period required by the solicitation.
2. Protest that solicitation provisions are either ambiguous or unreasonable is untimely since the protest involves alleged improprieties apparent prior to bid opening, but was not filed before that date with either contracting agency or GAO as required by Bid Protest Regulations.
3. A nonresponsive bid may not be accepted even though it would result in monetary savings to the government since acceptance would be contrary to the maintenance of the integrity of the competitive bidding system.
4. Determination of whether to cancel a solicitation and readvertise is a matter primarily within the discretion of the administrative agency and will not be disturbed in the absence of clear proof of abuse of discretion.

Siemens-Allis, Inc. (SA), protests the rejection of its low bid as nonresponsive and the award of a contract under invitation for bids (IFB) No. DACW03-84-B-0044 issued by the Army Corps of Engineers. It protests on three grounds: (1) the agency improperly refused to consider a late modification to SA's bid which would have made the bid responsive, (2) the IFB included defective specifications, and (3) the government is paying an unnecessarily high price for this contract.

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We summarily dismiss the protest in accordance with section 21.3(f) of our Bid Protest Regulations, which provides that when on its face a protest does not state a valid basis for protest, is untimely, or is otherwise not for consideration by GAO, the protest may be dismissed without requiring the submission of an agency report. See 49 Fed. Reg. 49,417, 49,421 (1984) (to be codified at 4 C.F.R. § 21.3(f)).

SA's bid was rejected as nonresponsive because, among other reasons, it provided a 60-day bid acceptance period rather than the minimum 90-day period required by the IFB. SA states that the day after bid opening, it submitted a modification of its bid to extend its period of acceptance to 120 days, 30 days more than the 90-day minimum, and argues that this modification should have been considered under the solicitation clause which provides that "a late modification of an otherwise successful bid that makes its terms more favorable to the government will be considered at any time it is received and may be accepted." It asserts that "otherwise successful" means that a low bidder can modify its bid in order to make the bid acceptable--in this case, to make the bid responsive--and contends that since its bid was low and this change is "favorable to the government," the agency acted improperly by not considering this modification which would have made its bid acceptable.


A late modification of a bid may only be accepted if the bid as originally submitted is responsive to the invitation. Marino Construction Company, Inc., 61 Comp. Gen. 269 (1982), 82-1 C.P.D. ¶ 167. A bid that is nonresponsive may not be changed after bid opening to be made responsive, since the nonresponsive bidder would receive the competitive advantage of electing to accept or reject the contract after bids were exposed by choosing to make its bid responsive or not. Valley Forge Flag Co., Inc., B-216108, Sept. 4, 1984, 84-2 C.P.D. ¶ 251.

SA does not dispute that its bid as originally submitted was nonresponsive for failing to comply with the material solicitation requirement that a bid remain available for acceptance by the government for the prescribed 90-day period. See Bridgewater Construction Corp., B-214187, Feb. 14, 1984, 84-1 C.P.D. ¶ 201. Since the protester's initial bid was not otherwise acceptable due to this deviation from a material requirement, the agency properly refused to consider the late modification.

SA also contends that the descriptive literature and loss measurement provisions of the IFB are "fundamentally flawed" in that they are either ambiguous or unreasonable requirements for disclosure of proprietary information. It states that these provisions had the effect of making this a sole-source procurement. This contention concerns alleged improprieties apparent on the face of the solicitation. Under our regulations, such protests must be filed with either the contracting agency or our Office prior to bid opening. Bid Protest Regulations, § 21.2(a)(1), 49 Fed. Reg. 49,420 (1984) (to be codified at 4 C.F.R. § 21.2(a)(1)). Bids were opened on August 29, 1984, but SA did not file a protest on this matter with the contracting agency until a telex dated September 25 and its protest to our Office was not filed until January 24, 1985. The protest on this matter, therefore, is untimely and will not be considered on the merits. See Solar Science Industries, Inc., B-214737.2, Apr. 6, 1984, 84-1 C.P.D. ¶ 390.

SA states that its bid is much lower than that of the proposed awardee and the government should not pay such an unnecessarily high price. However, even where a nonresponsive bid represents a monetary savings to the government, it may not be accepted since acceptance would be contrary to the maintenance of the integrity of the competitive bidding system. Kaydon Corporation, B-214920, July 11, 1984, 84-2 C.P.D. ¶ 41.

SA suggests further that, as a matter of procurement policy, the solicitation should be readvertised. However, the determination of whether to cancel a solicitation and readvertise is a matter primarily within the discretion of the administrative agency and will not be disturbed in the absence of clear proof of abuse of discretion. 50 Comp. Gen. 50 (1970).


Comptroller General
of the United States