

DECISION

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

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FILE: B-219559 **DATE:** August 9, 1985

MATTER OF: Central States Bridge Company, Inc.

DIGEST:

1. A bid that offers an acceptance period which is less than that required in the solicitation is nonresponsive and must be rejected. The fact that the protester alleges mistake is irrelevant, because a nonresponsive bid cannot be corrected.
2. Agency properly rejected a late modification from a bidder whose initial bid offered a 30-day bid acceptance period rather than the 60-day minimum period required by the solicitation.
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.

Central States Bridge Company, Inc. (CSB), protests the rejection of its low bid as nonresponsive and the award of the contract to the next lowest bidder under solicitation No. DACA01-85-B-0063 issued by the Army Corps of Engineers (Corps). CSB protests on the grounds that it should have been allowed to correct a "typographical error" which caused its bid to be nonresponsive and that the government is paying an unnecessarily high price under this contract.

We 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 the General Accounting Office, the protest may be dismissed without requiring the submission of an agency report. 4 C.F.R. § 21.3(f) (1985).

CSB responded to solicitation -0063 with an offer which stated that it would remain open for 30 days. The Corps rejected the bid as nonresponsive because the solicitation

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stated that offers which provided less than 60 days for government acceptance after the date bids are due will not be considered and will be rejected. After bid opening CSB sent the Corps a telegram stating that CSB had made a typographical error in its bid and had meant to state that its bid would remain open for 60 days instead of 30 days. CSB apparently would like to have its bid considered by the Corps despite its mistake or have the telegram considered as a modification to its bid which would make it acceptable.

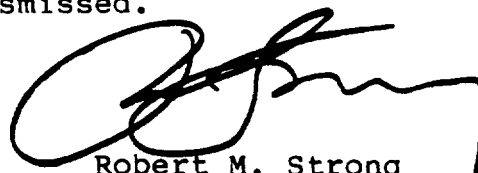
A bid must be responsive to a solicitation by showing on its face at bid opening that it is an unqualified offer to comply with all material requirements of the solicitation and that the offeror intends to be bound on the government's terms as set forth in the solicitation. If a bid fails to respond to all the material elements of the solicitation it is nonresponsive. The minimum bid acceptance period required in a solicitation is material, and a bidder's failure to specify the minimum bid acceptance period in its bid will render the bid nonresponsive. Legeay, Inc., B-218307, Mar. 22, 1985, 85-1 C.P.D. ¶ 338. An invitation for bids has a minimum acceptance period because all bidders are to share the same business risks of leaving their bids open for acceptance by the government for the same amount of time. An offeror who was allowed to specify a shorter acceptance period (regardless of whether the shorter period was by mistake or design) would have an unfair advantage over its competitors. It would be able to refuse the award after its bid acceptance period expired should it decide that it no longer wanted the award because of unanticipated cost increases, or extend its bid acceptance period after competing bids have been exposed. Legeay, Inc., B-218307, Mar. 22, 1985, 85-1 C.P.D. ¶ 338. Therefore, because CSB's acceptance period was less than the minimum required its bid was nonresponsive and could not be considered by the Corps.

Even though CSB's failure to specify the minimum acceptance period may have been due to a typographical error, its bid may not be corrected and made responsive after bid opening. Gerentine-Cutrone Sand and Gravel, Inc., B-217249, Dec. 19, 1984, 84-2 C.P.D. ¶ 679. A bid which is nonresponsive on its face may not be changed, corrected, or explained by the bidder after bid opening. As stated above, CSB's bid is nonresponsive on its face; therefore, CSB's explanation that its nonconforming acceptance period was a mistake is irrelevant. Legeay, Inc., supra.

After bid opening, CSB attempted to modify its acceptance period to conform with the solicitation. However, a late modification of a bid may be accepted only if the bid as originally submitted is responsive to the invitation. A bid that is nonresponsive may not be modified 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 whether to make its bid responsive. Siemens-Allis, Inc., B-218054, Feb. 8, 1985, 85-1 C.P.D. ¶ 169. Since CSB's bid was nonresponsive on its face, it could not be modified after bid opening to conform to the solicitation. The Corps was correct in refusing to consider the late modification.

CSB states that its bid is about \$39,000 lower than the second lowest bidder, so the government should award the contract to CSB to save money. In order to maintain the integrity of the competitive bidding system, nonresponsive bids may not be accepted even though the government could save money by accepting them. Siemens-Allis, Inc., B-218054, Feb. 8, 1985, 85-1 C.P.D. ¶ 169.

The protest is dismissed.



Robert M. Strong
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