

DECISION

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

FILE: B-220668 **DATE:** January 29, 1986
MATTER OF: Cardkey Systems

DIGEST:

1. Bid acceptance period is a material requirement not waivable or correctable after bid opening. Offer providing a shorter bid acceptance period than that required by the solicitation is nonresponsive.

3. Although discussions held between bidders and contracting officer after bid opening were improper, GAO will not disturb the award where protester, who was included in those discussions, submitted a bid that was nonresponsive for a reason unrelated to the subject of the discussions, and the firm thus was ineligible for award in any event.

Cardkey Systems (Cardkey) protests award of a contract to Basix Control Systems (Basix) under Veterans Administration (VA) solicitation No. IFB-201-10-85 for the design and installation of security equipment at the VA Supply Depot Data Processing Center in Hines, Illinois. Cardkey claims that it submitted the low responsive bid, that it was prejudiced by post-bid-opening discussions held between the contracting officer and bidders, and that it should be awarded the contract. We deny the protest.

Six bids were submitted in response to the VA invitation for bids. Two were found nonresponsive due to the absence of descriptive literature at bid opening on September 27, 1985. Later that day, the contracting officer telephoned three of the four remaining bidders, including Cardkey and Basix, because, according to the VA, the descriptive literature submitted with the bids "lacked sufficient specific information about the capabilities of the hardware proposed" and required "clarification." The contracting officer concluded, based on these discussions and the descriptive literature accompanying the bids, that

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Cardkey and another bidder did not meet the requirements of the solicitation and that the low responsive bidder was Basix. The contract was awarded to that firm on October 2.

The VA concedes that since this was a formally advertised procurement, the discussions conducted with bidders subsequent to bid opening were improper. The agency argues, however, that of overriding importance for purposes of this protest is the fact that Cardkey's bid was nonresponsive because it contained an insufficient bid acceptance period. The solicitation, in section 52.214-16, required that bids remain available for acceptance by the government for 60 days, yet Cardkey stated, in that same section, that it was offering only a 30-day acceptance period. The VA states that it contacted Cardkey after bid opening only because the contracting officer had not yet made a final determination regarding the effect of the acceptance period defect.

The VA is correct that the 30-day bid acceptance period in section 52.214-16 of Cardkey's offer rendered its bid nonresponsive. The bid acceptance period mandated in a solicitation is a material requirement and thus must be complied with at bid opening for the bid to be responsive. Central States Bridge Co., Inc., B-219559, Aug. 9, 1985, 85-2 C.P.D. ¶ 154.

We recognize that in another part of its bid--the space provided in section 12 on the first page of its bid (standard form 33)--Cardkey did indicate that the bid would remain open for 60 days. As the VA points out, however, section 12 includes a note that the section does not apply if the invitation for bids (IFB) includes the minimum bid acceptance provision at section 52.214-16. Moreover, section 52.214-16 provides that a bid acceptance period offered pursuant to that provision "supersedes any language pertaining to the acceptance period that may appear elsewhere" in the solicitation. Therefore, based on the plain language of the solicitation, Cardkey's entry in section 52.214-16 of its bid is controlling.

Even if the disparate bid acceptance periods in Cardkey's offer are viewed as rendering the bid ambiguous, that is, subject to more than one reasonable interpretation, Cardkey's bid remains nonresponsive. We have held that if a bid is responsive under one interpretation of an ambiguity, but nonresponsive under another, the bid is

nonresponsive. This is because responsiveness must be evident from the face of a bid in a formally advertised solicitation, and only a clarification subsequent to bid opening--which improperly gives the bidder the option to affect the bid's acceptability after opening--can establish the responsiveness of such a bid. Rice Services, Inc., B-218228.2, Oct. 7, 1985, 85-2 C.P.D. ¶ 384. Furthermore, because only responsive bids may be considered for award, the fact that the VA did not finally determine Cardkey's nonresponsiveness until after holding discussions with Cardkey regarding technical compliance with the IFB carries no legal import.

As to the effect of the post-bid-opening discussions held between the contracting officer and the three low bidders under consideration for award, the VA concedes that the discussions were improper, as stated above. We agree with the agency that this impropriety does not warrant a change in contractors. The reason is that Cardkey, which was included in the discussions, was nonresponsive for a reason unrelated to what the record shows was their focus for all bidders: certain precise technical areas of the invitation's requirement. That is, Cardkey was ineligible for award due to its incorrect bid acceptance period notwithstanding the impropriety in issue.

Accordingly, we will not upset the award on this basis. Computer Terminal Sales, B-200366, Jan. 22, 1981, 81-1 C.P.D. ¶ 37. We do note in this regard that the VA advises it has taken steps to insure that the same problem does not recur.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel