

C. Melady



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cleveland General
File: B-225804.2
Date: April 23, 1987

DIGEST

1. Price-related factors such as overhead and cost of money may be considered in evaluating bids only if the solicitation specifically so provides.
2. Bid offering delivery on more accelerated basis than specified in invitation for bids (IFB) is responsive where IFB specifically authorizes accelerated delivery schedule.

DECISION

Cleveland General protests the award of a contract to Southwest Aerospace Corporation under invitation for bids (IFB) No. DAAH01-87-B-0006, issued by the Army for ballistic aerial targets. The protester challenges the Army's determination that Southwest's bid offering an accelerated delivery schedule was the lowest responsive bid under the IFB. We dismiss the protest.

The IFB, issued on November 6, 1986, called for a first article lot of 25 targets, a basic quantity of 5965 targets, and an option quantity of 8050 targets. Bids were to be evaluated based on the combined price for the first article, basic, and option quantities. The IFB required delivery of most of the targets (a total of 13,975) to begin 320 days after award at a rate of 300 targets every 30 days. Section F-6 of the IFB also authorized bidders to propose an earlier delivery schedule, providing in pertinent part:

"b. Bids offering delivery of each quantity within the applicable delivery period specified under each contract line item will be evaluated equally as regards time of delivery. Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable

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delivery period specified under each contract line item will be considered nonresponsive and will be rejected. When a bidder offers an earlier delivery schedule than that called for under each contract line item, the Government reserves the right to award either in accordance with the REQUIRED schedule or in accordance with the schedule offered by the bidder." (Emphasis added.)

Southwest entered an earlier delivery schedule in the space provided under section F-6, offering 670 rather than 300 targets every 30 days. Southwest's bid based on the accelerated schedule (\$6,145,920) was the lowest bid received. The protester's bid (\$6,308,081.95), based on the 300 targets/30 days delivery schedule set out by the Army in the IFB, was the second lowest bid.

The Army originally rejected Southwest's bid on the ground that the Army could not accommodate the accelerated delivery proposed. After Southwest filed a protest with our Office challenging that determination, the Army reconsidered its position and decided to make award to Southwest, stating that upon review it had found that Southwest's delivery schedule could be accommodated.

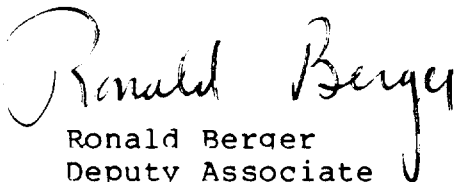
Cleveland General argues that the accelerated delivery schedule Southwest proposed will result in additional costs to the government which would not be incurred under the delivery schedule set out in the IFB, such as costs for storage, overhead and administration, as well as the cost of money involved in early payment. According to Cleveland General, if these costs are added, Southwest's bid is no longer low.

In procurements using sealed bidding, the contracting agency is required to make award to the responsive, responsible bidder whose bid is most advantageous to the government, considering only price and the other price-related factors in the IFB. 10 U.S.C. § 2305(b)(3) (Supp. III 1985). While the agency thus may consider other price-related factors in addition to bid price in determining the low bid, the IFB must provide for evaluation of these factors before they may be considered. Fairchild Weston Systems, Inc., B-211650, Sept. 20, 1983, 83-2 CPD ¶ 347. Here, since the IFB did not provide for evaluation of the factors the protester cites, they could not properly be considered in evaluating Southwest's bid. Western Publishing Co., B-224376, Sept. 2, 1986, 86-2 CPD ¶ 249. As a result, we see no basis to question the Army's determination that Southwest was the low bidder.

The protester also argues that the accelerated delivery schedule Southwest offered made its bid nonresponsive. We disagree. While a bid is nonresponsive where it provides for a longer delivery schedule than called for in the IFB, Perkins Plastics, Inc., B-223641, Aug. 29, 1986, 86-2 CPD ¶ 243, here Southwest's accelerated schedule clearly satisfies the Army's minimum requirement for incremental deliveries set out in the IFB. Further, as noted above, the IFB specifically authorized bidders to propose and reserved the Army's right to accept an accelerated delivery schedule, in accordance with Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 12.104(a) (1986) and 52.212-1 (1985).

Finally, the protester argues that since accelerated delivery shifts the risk of loss to the government earlier than under the delivery schedule called for by the IFB, Southwest's bid could not be accepted consistent with FAR, 48 C.F.R. § 14.404-2(d), which requires rejection of a bid which imposes conditions modifying the requirements of an IFB or limiting the bidder's liability to the government. In view of the fact that it was specifically authorized by the IFB, we fail to see how accelerated delivery constitutes either a modification of the IFB requirements or a limitation on the bidder's liability within the meaning of the FAR provision.

The protest is dismissed.


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General Counsel