The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sac & Fox Industries, Ltd.

File: B-231873

Date: September 15, 1988

DIGEST

1. When a bidder, either intentionally or by mistake, specifies in its bid an acceptance period that is shorter than the minimum period expressly required by the invitation for bids the bid is nonresponsive on its face and may not be corrected after bid opening.

2. Where an award was made under an invitation for bid (IFB) that was canceled and then reinstated, the agency did not act improperly in basing the award upon a review of only those bids received in response to the IFB, rather than issuing a new solicitation for its requirement for a lesser quantity of the item in question; the record shows that the agency obtained adequate competition and was able to meet its actual needs, and that both the IFB and the awardee's bid explicitly provided for the possibility of a contract for the reduced quantity.

DECISION

Sac & Fox Industries, Ltd. (S&F) protests the rejection of its apparent low bid as nonresponsive under invitation for bids (IFB) No. DLA100-88-B-0020, issued by the Defense Logistics Agency (DLA) for fire-retardant coveralls to protect military personnel. S&F asserts that the agency improperly determined that its bid was nonresponsive because it offered a bid acceptance period that was shorter than the minimum 60-day period required by the solicitation. S&F also states that DLA acted improperly when, after canceling the solicitation, it reinstated the IFB and awarded a contract for a lesser quantity to the apparent second low bidder, Tennier Industries, Inc., instead of resoliciting for the reduced requirement.

We deny the protest.

The solicitation, issued as a total small business set-aside, incorporated the language of section 52.214-18 of the Federal Acquisition Regulation (FAR) (Apr 1984), "Minimum Bid Acceptance Period," and required that bidders specify a minimum acceptance period of 60 days. The IFB expressly cautioned bidders that a bid allowing less than the minimum period would be rejected. DLA rejected S&F's bid as nonresponsive because it specified a bid acceptance period of only 45 days.

S&F asserts that it notified the agency 2 days after bid opening that it had made a typographical error in its bid and that it was in fact allowing the full 60-day acceptance period. Since the agency knew well in advance of award that S&F was in fact meeting the 60-day acceptance requirement, the firm asserts the rejection of its bid was improper.

S&F is incorrect. A minimum acceptance period in an IFB requires bidders to share the same business risks of leaving their bids open for acceptance by the government for the same amount of time. A bidder allowed to specify a shorter acceptance period would have an unfair advantage over its competitors by being able, on the one hand, to refuse the award after the bid acceptance period expires should the firm decide it no longer wants the award because of unanticipated cost increases, or, on the other hand, to extend the bid acceptance period after competing bids have been exposed if the firm wants the award. Expert Electric, Inc., B-228569, Nov. 6, 1987, 87-2 CPD ¶ 459. Consequently, it is well-established that an IFB requirement that a bid remain available for acceptance by the government for a prescribed period of time is a material requirement, and a failure to comply with it cannot be waived or corrected after bid opening. See, e.g., Taylor Lumber & Treating, Inc., B-229715, Dec. 23, 1987, 87-2 CPD ¶ 625. This is the case even if the bid would provide savings to the government; we have long recognized that the public interest in maintaining the integrity of the competitive bidding process outweighs any monetary benefit to be gained from waiving material bidding deficiencies. Id. Accordingly, we find that DLA's rejection of S&F's bid as nonresponsive based on the firm's failure to offer the minimum required bid acceptance period was proper.

S&F further asserts that, even if DLA was correct in rejecting S&F's bid, the agency acted improperly in making an award under the present IFB rather than resoliciting its requirement. As S&F correctly points out, on April 1 the agency notified all bidders that the solicitation was canceled. S&F does not challenge the propriety of the cancellation, but asserts that all bids became void upon the

cancellation and could not be revived and that instead of reinstating the IFB, the agency should have issued a new solicitation for the reduced quantity for which it made an award.

We find S&F's assertions to be without merit. An agency's reinstatement of a canceled IFB and revival of the bids received is proper where the justification for the cancellation no longer exists, the needs of the agency would be met by an award under the original solicitation, and no bidders are prejudiced. Woodson Construction Co., Inc.--Reconsideration, B-221530.2, May 23, 1986, 86-1 CPD ¶ 483; ADAK Communications Systems, Inc., B-222546, Jul. 24, 1986, 86-2 CPD ¶ 103.

Here, the record indicates that DLA canceled the IFB under the mistaken belief that its need for the coveralls would be met by existing contracts. When those contracts were subsequently terminated for default, due to the urgency of DLA's need for the fire-protective items, the agency reinstated the IFB, since the justification for the cancellation no longer existed and the agency's needs would be met by at least one of the bids received.

S&F argues that it was prejudiced by the award under the reinstated IFB because it (and other bidders) was not given a chance to bid on the reduced quantity. The IFB, however, incorporated by reference FAR clause 52.214-10, which explicitly provides that the government reserves the right to make an award for a quantity less than the stated amount at the unit price offered. Since all bidders under the IFB were on notice of the provision, they were not prejudiced by the agency's award for a reduced quantity based on the lowest unit price offered by a responsive bidder, Tennier. Consequently, DLA did not act improperly in awarding the contract under the reinstated IFB rather than prejudice all bidders by conducting a new procurement after exposure of prices. See KAL Maintenance, Inc., B-225429, Feb. 24, 1987, 87-1 CPD ¶ 207.

S&F also asserts that award to Tennier for a reduced quantity was improper because Tennier allegedly bid on an "all or none" basis for the specified larger quantity of coveralls. This is not the case. The solicitation set forth several quantity alternatives, and Tennier's bid did not incorporate the all or none alternative, stated as "100 percent of all items or none"; rather, Tennier adopted the alternative "100 percent of all items to be awarded or none." Thus, Tennier offered to accept an award for the full quantity awarded, not the full quantity advertised. S&F's assertion that the bid was nonresponsive to the

reinstated IFB therefore is without merit. In any event, S&F is not an interested party eligible to challenge the accepability of Tennier's bid; since its own bid is nonresponsive, S&F would not be in line for award in any case, and the firm therefore has no direct economic interest in protesting the issue. See 4 C.F.R. § 21(a); Seagull Technical Services, Co., B-226756, Jun. 19, 1987, 87-1 CPD ¶ 615.

The protest is denied.

James F. Hinchman
General Counsel