

Ahearn



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Perkin-Elmer Corporation  
**File:** B-236175; B-236175.2  
**Date:** October 13, 1989

## DIGEST

Bid was properly rejected as nonresponsive where in "Period for Acceptance of Bids" clause and cover letter attached to bid it was stated that bid was for acceptance within 30 days, whereas "Minimum Bid Acceptance Period" clause also included in solicitation required a 60-day bid acceptance period; IFB was not rendered ambiguous by inappropriate inclusion of "Period for Acceptance of Bids" clause since, reading solicitation as a whole, space provided in the clause for an acceptance period different than 60 days clearly meant a period longer than 60 days.

## DECISION

Perkin-Elmer Corporation protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DACW69-89-B-0030, issued by the United States Army Corps of Engineers for Plasma Quad PQ2 Plus, or equal, and the award of a contract to VG Instruments, Inc. Although Perkin-Elmer's bid was apparently low, the Army rejected it as nonresponsive for, among other reasons, failure to comply with the minimum bid acceptance period required by the solicitation. Perkin-Elmer protests the rejection of its bid.

We deny the protests.

The IFB included in section K-9 the "Minimum Bid Acceptance Period" clause, as set forth under Federal Acquisition Regulation (FAR) §§ 52.214-16 and 14.201-6(j), which stated that a minimum bid acceptance period of 60 calendar days was required. The clause also provided a space for the bidder to specify its bid acceptance period should the bidder choose to hold its bid open for more than the required 60 days. The clause specifically provided that it superseded any language pertaining to the acceptance period

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appearing elsewhere in the solicitation and notified bidders that a bid allowing less than the minimum 60-day acceptance period would be rejected. The IFB also included in section L-11 the "Period for Acceptance of Bids" clause as set forth under FAR §§ 52.214-15 and 14.201-6(i), which stated that the bidder agrees to furnish all items at the prices bid within the time specified in the IFB if the bid is accepted within 60 days, unless a different period was inserted by the bidder in the blank space provided.

In its bid, under section K-9, Perkin-Elmer did not complete the blank space, indicating that it did not take exception to the 60-day acceptance period requirement. However, under section L-11, Perkin-Elmer filled in the blank space (for an acceptance period other than 60 days) with 30 calendar days. Additionally, in a cover letter submitted with its bid, Perkin-Elmer provided for bid expiration on July 1, 1989, 30 days after the June 1 bid opening. The Army rejected the firm's bid as nonresponsive based on this and other deficiencies.

Perkin-Elmer contends that its bid was fully consistent with the terms of the IFB and that it should not have been rejected. The firm argues that the inclusion of both clauses (section K-9 and L-11) rendered the IFB ambiguous, and that it reasonably construed the "Period for Acceptance of Bids" clause in section L-11 as an invitation to provide an alternate bid acceptance period shorter than the specified 60 days, notwithstanding that the IFB also set forth 60 days as a minimum bid acceptance period.

Preliminarily, we note that the FAR provides for inclusion of only one, not both, of the bid acceptance period provisions in issue here. Specifically, FAR § 14.201-6(i) states that the "Period for Acceptance of Bids" clause in section L-11 should not be used where a minimum bid acceptance period is specified, as in the "Minimum Bid Acceptance Period" clause here. However, we find that the agency's inappropriate inclusion of the section L-11 clause did not render the IFB materially defective here.

A solicitation is ambiguous in a legal sense only where, when read as a whole, it is susceptible of two or more reasonable interpretations. GEM Engineering Co., Inc., B-231605.2, Sept. 16, 1988, 88-2 CPD ¶ 252. Here, we do not believe there were two reasonable interpretations; Perkin-Elmer's interpretation of the solicitation was not reasonable reading the IFB as a whole. Section K-9, which by its terms was controlling as to the bid acceptance period, clearly specified a minimum acceptance period of 60 days, and provided that a bidder could only specify a longer

acceptance period. While section L-11 did not state that only a longer period could be specified, we think it clear that when read in conjunction with section K-9 section L-11 provided only for an acceptance period of 60 days or longer. While it is unfortunate that the protester may have been confused by the two differently worded clauses, we again note that section K-9 specified the 60-day minimum acceptance period and specifically stated that it superseded any other language in the solicitation pertaining to the acceptance period. We conclude that the protester's interpretation of the solicitation as inviting an alternate bid acceptance period shorter than 60 days was unreasonable.

It is well-established that a provision in a sealed bid solicitation requiring a bid to remain available for the government's acceptance for a certain period is a material requirement that must be complied with at bid opening for the bid to be responsive. Roadrunner Moving & Storage, Inc., B-234616, Mar. 2, 1989, 89-1 CPD ¶ 230. A bidder who is allowed to specify a shorter acceptance period would have an unfair advantage over its competitors; it would be able to refuse award after its bid acceptance period expired should it decide it no longer wanted the award because of unanticipated cost increases, or extend its bid acceptance period after competing bids have been exposed. Winsar Corp. of Louisiana, B-226507, June 11, 1987, 87-2 CPD ¶ 585. Thus, as Perkin-Elmer offered a shorter bid acceptance period than required, the Army properly rejected its bid as nonresponsive. (In view of this conclusion, it is unnecessary to address the other bases upon which the agency determined Perkin-Elmer's bid to be nonresponsive.)

Perkin-Elmer also protests that the award to VG was improper because the awardee failed to correctly complete the Buy American-Balance of Payments Program Certificate in the solicitation; essentially, the protester contends that the awardee failed to indicate whether foreign end products listed on an attachment to the certificate met the classification of "qualifying country end products," which would be given the same evaluation preferences over foreign end products that is accorded domestic end products. However, the clause relates solely to the evaluation of bids, specifically, to whether an evaluation preference will be accorded; since only VG submitted a responsive bid, even if

all of VG's end products were deemed to be nonqualifying foreign end products, its bid would still be the low responsive bid.

The protests are denied.

*for Seymour Spas*  
James F. Hinchman  
General Counsel