

A. Smith



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: U.S. Design
File: B-237422
Date: October 30, 1989

DIGEST

1. Where an invitation for bids requires that bids be submitted on an f.o.b. destination basis, a bid which includes a quotation form that specifies that delivery will be f.o.b. origin is nonresponsive because this change impermissibly shifts the risk of loss or damage from the contractor to the government.
2. Where a bid includes a quotation form which states that prices are valid for 30 days in response to a solicitation that requires a minimum bid acceptance period of 60 days the bid is properly rejected as nonresponsive.
3. An offeror has no legal right to correct mistakes in its bid that would make its otherwise nonresponsive bid responsive to the solicitation.

DECISION

U.S. Design protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 213-89-0035 issued by the Department of Health and Human Services (HHS) for an optical storage system. We dismiss the protest without obtaining an agency report since it is clear from the record that the protest is without legal merit. 4 C.F.R. § 21.3(m) (1989).

HHS rejected U.S. Design's apparent low bid because (1) it did not comply with the delivery terms, (2) it included a 30-day acceptance period where the solicitation required a minimum of 60 days, and (3) the agency could not establish the firm bid price. We have obtained from HHS a copy of the protester's bid which shows that in addition to filling in the IFB schedule of prices, it submitted a separate quotation form containing not only pricing information but other terms which conflicted with those of the solicitation.

046929/139887

Although the solicitation, in accordance with Federal Acquisition Regulation (FAR) § 52.247-35 (FAC 84-37), required delivery f.o.b. destination within consignee's premises, U.S. Design's quotation form stated that "prices are: f.o.b. seller's plant." The protester argues that because under its General Services Administration (GSA), Federal Supply Schedule (FSS) contract it must provide f.o.b. destination on all government orders, its entry of "f.o.b. seller's plant" was a "clear written error" and one which has no bearing on cost. In this regard, U.S. Design attached to its protest a blank quotation form which includes the note:

"GSA Contract #GS0089AGS6431 terms and conditions supercede U.S. Design's terms and conditions."

This note is absent, however, from the completed quotation form attached to U.S. Design's bid and provided to us by HHS. Therefore, in U.S. Design's quotation form actually submitted with its bid there was no cross-reference to its GSA FSS contract which even arguably could have "superceded" its f.o.b. origin terms.

We have consistently held that where a solicitation requires that bids be submitted on an f.o.b. destination basis, a bid which specifies that delivery will be f.o.b. origin is nonresponsive because this change shifts the risk of loss or damage from the contractor to the government. Barnes Drill Co., B-226591, May 26, 1987, 87-1 CPD ¶ 542.

The protester next contends that although in its quotation form it stated that its prices were valid for 30 days, since the equipment proposed also was on its GSA FSS contract in effect through March 31, 1990, Design felt it was unnecessary "to restate the obvious." We understand this to be a contention that by reference to the protester's GSA FSS contract, HHS should have concluded that the protester's prices were good for a period even longer than that required by the IFB. The protester argues that in any event the agency should have called it to correct any ambiguity.

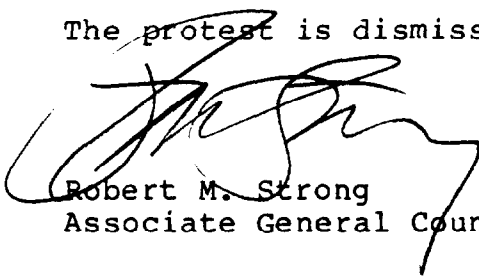
We disagree. The intent of a bid must be discerned from the four corners of the bid itself and it would be improper for an agency to contact a bidder to change terms of its bid so as to make it responsive as this would give the bidder an unfair competitive advantage over other bidders. The minimum acceptance period called for in a solicitation is a material requirement with which the bid must strictly comply

at bid opening in order to be considered responsive. The Ramirez Co. and Zenon Constr. Corp., B-233204, Jan. 27, 1989, 89-1 CPD ¶ 91. As we stated above, U.S. Design's quotation form did not contain the note cross-referencing its GSA FSS contract. The quotation's statement that it was "valid for thirty days" was in direct conflict with the IFB's requirement that bids be available for acceptance for a minimum of 60 days after bid opening. Consequently, we find that the contracting activity properly rejected U.S. Design's bid as nonresponsive. This is true because in order to be responsive a bid must show on its face at the time of bid opening that it is an unqualified offer to comply with all of the material requirements of the solicitation. Id.

U.S. Design also contests the agency's determination that "a firm bid price could not be established." Although the record does not illustrate this issue fully, we find it unnecessary to resolve in the context of this protest since we have already determined that exceptions taken by the protester to the IFB's f.o.b. point and acceptance period requirements rendered the protester's bid nonresponsive.

Additionally, although U.S. Design contends that the agency was required to notify it of the mistakes in its bid and then permit it to correct the alleged errors as apparent clerical mistakes, the mistake in bid procedures cannot be used to allow a bidder to correct a mistake that would make its bid responsive to the solicitation. See FAR § 14.406-3 (FAC 84-37).

The protest is dismissed.



Robert M. Strong
Associate General Counsel