



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Banks Ship Rigging Corp.

File: B-239853

Date: September 4, 1990

Joel Schonfeld, Esq., Goldstein, May & Schonfeld, for the protester.

Earnest Hawkins, Department of Transportation, for the agency.

Sabina K. Cooper, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Even though protester acknowledged amendment changing delivery schedule, protester's bid was ambiguous and therefore properly rejected as nonresponsive where protester also inserted the unamended delivery date on its bid form, thereby creating doubt as to whether protester had bound itself to deliver in accordance with the amended delivery schedule.

DECISION

Banks Ship Rigging Corp. protests the rejection of its bid as nonresponsive and award of a contract to any other bidder under invitation for bids (IFB) No. DTMA92-90-B-00100, issued by American Overseas Marine Corporation as ship manager for the Department of Transportation, Maritime Administration (MARAD), for ship repairs to the SS CAPE AVINOF.

We deny the protest.

The IFB, issued November 20, 1989, provided for topside maintenance, cargo hatch modifications and machinery repairs to the SS CAPE AVINOF. Amendment No. 1, issued November 29, revised the time of delivery from 50 working days to 65 calendar days. Amendment No. 2, issued December 8, changed the coating requirement of the hatch cover panels from coating of only new and disturbed steel to complete

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interior and exterior coating.^{1/} MARAD indicated on Standard Form (SF) 30, the document used to issue the amendments, that bidders were not required to return the amendment forms themselves. Banks acknowledged amendment No. 1, writing in the date November 28, 1989, on the SF 33 cover sheet submitted with its bid, but also wrote in the number "50" before the printed words "working days" in the space provided for proposed delivery schedule. Banks did not acknowledge amendment No. 2 on the SF 33.

MARAD received eight bids by the December 19 bid opening. On February 6, March 29, and April 24, 1990, MARAD requested that Banks, among other bidders, extend its \$900,324 bid. On April 30, MARAD determined that the low bidder was nonresponsive and therefore ineligible for award. On May 1, MARAD determined that Banks's bid was nonresponsive because of the modification in its bid of the delivery schedule imposed by amendment No. 1, and Banks's failure to acknowledge receipt of amendment No. 2. Accordingly, MARAD did not request that Banks further extend its bid.

On May 11, in response to a telephone inquiry from Banks, MARAD informed the firm that it was no longer being considered for award. Banks timely filed its protest in our Office on May 25, within 10 working days after discovering the basis of its protest.^{2/} MARAD has not yet awarded the contract.

Banks argues that its insertion of the number "50" before the words "working days" on the delivery schedule is a

^{1/} Two additional amendments were issued on December 11 and December 18. They were informational in nature and the agency states that they are not material.

^{2/} The agency argues that to be timely, the protest should have been filed by May 21, 10 calendar days after Banks received notice on May 11 that its bid had been rejected as nonresponsive. In fact, under our Bid Protest Regulations, 4 C.F.R. §§ 21.0(e), 21.2(a)(2) (1990), Banks had 10 working days, not calendar days, from May 11 to file its protest. Since the protest was filed on May 25, the tenth working day after the protester was advised of the basis for protest, the protest is timely.

minor error that should be disregarded in light of the fact that Banks acknowledged amendment No. 1 on the face of its bid. In addition, Banks asserts that it acknowledged amendment No. 2 by fax, and that, in any case, the requirements added by that amendment were not material and had no impact on Banks's price.

The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an unequivocal offer to perform in accordance with all the material terms and conditions of the IFB. Balongas, S.A., B-215153, July 23, 1984, 84-2 CPD ¶ 86. An IFB delivery schedule is a material requirement, and where the inclusion of a qualification in a bid has the effect of allowing delivery later than required by the solicitation, the bid is nonresponsive and must be rejected. ASEA Electric, Inc.--Recon., B-218129.2, May 17, 1985, 85-1 CPD ¶ 565.

Here, the issue is whether the protester is legally bound to perform in accordance with the delivery schedule as revised by amendment No. 1. Banks acknowledged the amendment establishing the more stringent 65 calendar day delivery term on the face of its bid. However, by inserting the number "50" on the line provided in the bid for the delivery time Banks created doubt as to which delivery schedule it intended to meet. At best, there are two reasonable interpretations of the bid, one of which makes the bid nonresponsive. Under these circumstances, the agency properly rejected Banks's bid as nonresponsive. Pierce Mfg., Inc., B-224007, Oct. 28, 1986, 86-2 CPD ¶ 483.

We recognize that in a similar case, Alaska Mechanical, Inc., B-225260.2, Feb. 25, 1987, 87-1 CPD ¶ 216, aff'd, RG&B Contractors, Inc.--Recon., B-225260.4; B-225260.5, Apr. 20, 1987, 87-1 CPD ¶ 425, we held that a bidder's acknowledgment of an amendment extending the minimum bid acceptance period superseded the shorter period inserted by the protester on its bid form. That case is distinguishable, however, since there we were persuaded that the handwritten term in the protester's bid had been inserted prior to receipt of the amendment, and thus that the only reasonable interpretation of the bid was that the bidder had bound itself to comply with the revised acceptance period by acknowledging the subsequent amendment. Here, in contrast, the bid is ambiguous since there is no evidence clearly showing that Banks in fact intended to bind itself to the amended delivery schedule.

Given our finding that Banks's bid was properly rejected based on the ambiguity created by its acknowledgment of amendment No. 1, we need not address the other issue raised, whether Banks's failure to acknowledge amendment No. 2 rendered its bid nonresponsive.

The protest is denied.



James F. Hinchman
General Counsel