



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Isometrics, Inc.

File: B-241333

Date: October 30, 1990

Peter M. Kilcullen, Esq., and Christopher M. Johnson, Esq., Kilcullen, Wilson & Kilcullen, for the protester. Stephen J. Spinello, Esq., Hartman, Underhill & Brubaker, for Ross Engineering Company, an interested party. George Brezna, Esq., United States Marine Corps, for the agency. Kathleen A. Gilhooly, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Failure to submit solicitation page containing "Minimum Bid Acceptance Period" clause does not render bid nonresponsive where bidder indicates on Standard Form 33 that it is offering the same minimum bid acceptance period required by omitted clause.

DECISION

Isometrics, Inc. protests the award of a contract to Ross Engineering Company under invitation for bids (IFB) No. M67854-90-B-0008, issued by the United States Marine Corps for fuel/water tanks, pumps and associated technical data. Isometrics contends the awardee's bid should be rejected for failure to offer the minimum bid acceptance period.

We summarily dismiss the protest. 4 C.F.R. § 21.3(m) (1990).

The IFB included in section K-1 the "Minimum Bid Acceptance Period" clause, as set forth under Federal Acquisition Regulation (FAR) § 52.214-16 (FAC 84-53), which stated that a minimum bid acceptance period of 60 calendar days was

required. The clause 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 The clause also provided that it superseded any language pertaining to the acceptance period appearing elsewhere in the solicitation and notified bidders that a bid allowing less than the minimum 60-day acceptance period would be rejected.

Ross Engineering's low bid at the September 11, 1990, bid opening omitted section K-1 containing the "Minimum Bid Acceptance Period" clause. However, Ross Engineering's bid package included a signed Standard Form (SF) 33 entitled "Solicitation, Offer and Award," in which it specified in Item 12 a 60-day acceptance period.

Isometrics protests that Ross Engineering's bid must be rejected as nonresponsive because it failed to return the IFB page containing FAR clause 52.214-16, and, therefore, did not obligate itself to meet the minimum bid acceptance period in the solicitation. Isometrics contends that since the SF-33 contained a preprinted note that "Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period," Ross Engineering would have had to acknowledge and return section K to be responsive.

Where a bidder qualifies its bid in a manner that serves to protect the bidder or reserve rights which are inconsistent with a material requirement of the IFB, the bid must be rejected as nonresponsive. Winsar Corp. of La., B-226507, June 11, 1987, 87-1 CPD ¶ 585. The minimum acceptance period called for in a solicitation is a material requirement, compliance with which is required at bid opening for the bid to be responsive. Elevator Control Serv.; Elcon Enters., Inc., B-239360, June 6, 1990, 90-1 CPD ¶ 534. An IFB has a minimum acceptance period because bidders are to share the same business risks of leaving their bids open for acceptance by the government for the same amount of time. 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. Perkin-Elmer Corp., 69 Comp. Gen. 27 (1989), 89-2 CPD ¶ 352.

Ross Engineering's bid did not take exception to the IFB's requirement that bids be available for acceptance for a minimum of 60 days after bid opening. Rather, its notation on

the SF-33 indicated it was offering a 60-day minimum bid acceptance period in conformance with the IFB's requirement. Since Ross Engineering specified in its bid that it was offering an acceptance period at least as long as that required by the government, we conclude its bid was responsive despite its failure to include section K-1.

Accordingly, we dismiss the protest.

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