



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

Decision

Matter of: Terra Vac, Inc.

File: B-241643

Date: February 7, 1991

Alan M. Klinger, Esq., Stroock & Stroock & Lavan, for the protester.
Richard B. Golden, Esq., Norton & Christensen, for Moretrench Environmental Services, an interested party.
Paul M. Fisher, Esq., Department of the Navy, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Even though protester acknowledged amendment shortening project completion schedule in its undated bid form, protester's bid was ambiguous and therefore properly rejected as nonresponsive as bid also included schedule showing completion in accordance with original, longer deadline, thereby creating doubt as to whether protester intended to bind itself to deliver in accordance with the completion schedule as amended.

DECISION

Terra Vac, Inc. protests the rejection of its bid as nonresponsive, and award of a contract to Moretrench Environmental Services, under invitation for bids (IFB) No. N62472-90-B-5338, issued by the Department of the Navy for construction, start-up, and prove-out of a ground water withdrawal and treatment system.

We deny the protest.

The IFB, as issued on August 17, 1990, required contract completion to be not later than 604 days after the date set for commencement of work, which was to be 15 days after the date of the award. Amendment 0002, issued September 4 (amendment 0001 is not relevant here), revised, among other things, the contract completion schedule to 374 days after the date for commencement of work. Three bids were received on September 17. Although Terra Vac's low bid acknowledged amendment 0002 by indicating the amendment date on the

undated bid form, it also included a chart showing a 414-day completion schedule and a statement that, although permitting can take up to 1 year, "Terra Vac believes that permitting can be expedited." The Navy viewed this 414-day project completion schedule as taking exception to the 374-day schedule in amendment 0002, and determined that Terra Vac's bid was ambiguous, and thus nonresponsive, even though it also acknowledged the amendment.

Terra Vac argues that, since it acknowledged amendment 0002 containing the revised 374-day completion schedule, this schedule superseded the 414-day completion schedule submitted with its bid, which Terra Vac claims in a post-bid opening affidavit was prepared prior to its acknowledgment of amendment 0002. Terra Vac maintains that its bid should be considered responsive in accordance with our decision in Alaska Mechanical, Inc., B-225260.2, Feb. 25, 1987, 87-1 CPD ¶ 216, recon. denied, RG & B Contractors, Inc.--Recon., B-225260.4; B-225260.5, Apr. 20, 1987, 87-1 CPD ¶ 425.

A bid, to be responsive, must, as submitted, be an unequivocal offer to perform in accordance with all the material terms and conditions of the IFB, Banks Ship Rigging Corp., B-239853, Sept. 4, 1990, 90-2 CPD ¶ 181; if any substantial doubt exists as to whether a bidder upon award could be required to perform all material requirements specified in the IFB, the integrity of the competitive bidding system requires rejection of the bid as nonresponsive. Caswell Int'l Corp., B-233679, Mar. 21, 1989, 89-1 CPD ¶ 296. An IFB delivery schedule is a material requirement, a bidder's unequivocal agreement to which must be clear in order for the bid to be deemed responsive. See Banks Ship Rigging Corp., B-239853, supra.

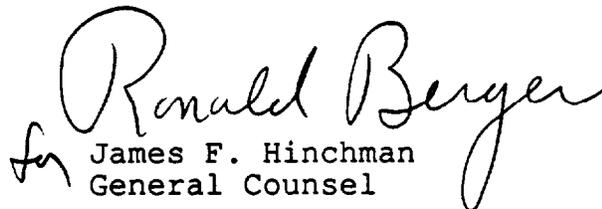
Terra Vac's bid did not unequivocally bind the firm to perform in accordance with the stricter performance schedule in amendment 0002. The unsolicited 414-day completion schedule included in Terra Vac's bid created an ambiguity as to whether the protester was offering to meet the amended 374-day schedule, or the 414-day schedule. The bid contains no other indication that the the 374-day schedule was intended to be controlling. Under these circumstances, the bid plainly was ambiguous, offering one acceptable schedule and one unacceptable schedule. It follows that the bid properly was rejected as nonresponsive.

Our decision in Alaska Mechanical, Inc., B-225260.2, supra, is inapposite here. There, we held that a bidder's acknowledgment of an amendment extending the minimum bid acceptance period superseded the conflicting shorter period inserted by the protester on its bid form, and that the bid therefore was responsive, based on our finding that the

handwritten term in the bid had been inserted prior to receipt of the amendment; 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. In contrast, as indicated above, here there is no evidence that Terra Vac intended its acknowledgment of amendment 0002 to supersede the 414-day schedule included in its bid. Since responsiveness must be determined from the face of the bid at bid opening, Terra Vac's post-bid-opening affidavit is insufficient to establish its intent to be bound by the shorter completion schedule. See Reid & Gary Strickland Co., B-239700, Sept. 17, 1990, 90-2 CPD ¶ 222.

Terra Vac argues that, since a completion schedule was not required by the IFB, its submission of the 414-day schedule was a minor administrative error that should be disregarded. However, all information submitted with a bid, even unsolicited documents, are relevant to determining a bidder's intention to be bound by the solicitation requirements. Vista Scientific Corp., B-233114, Jan. 24, 1989, 89-1 CPD ¶ 69; Caswell Int'l Corp., B-233679, supra. The unsolicited 414-day schedule, which made it unclear whether Terra Vac intended to be bound to the amended completion schedule, therefore was properly considered in this context.

Finally, Terra Vac argues that acceptance of its low bid would be in the government's best interest. We consistently have held, however, that a nonresponsive bid may not be accepted even though it would result in monetary savings to the government, since acceptance would compromise the integrity of the sealed bidding system. Canvas & Leather Bag Co., Inc., B-227100, July 24, 1987, 87-2 CPD ¶ 85.


for James F. Hinchman
General Counsel