



Comptroller General
of the United States

Washington, D.C. 20548

144-5259

Decision

Matter of: The Kraissl Company

File: B-243646

Date: August 1, 1991

Stephen F. White, Esq., Wright, Constable & Skeen, for the protester.
Michael R. Nevarez, Esq., Department of Transportation, U.S. Coast Guard, for the agency.
David J. Ervin and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where bidder offers a delivery schedule which fails unambiguously to commit the bidder to the required delivery period contained in the solicitation, bid is properly rejected as nonresponsive.

DECISION

The Kraissl Company protests the rejection of its bid under invitation for bids (IFB) No. DTCG40-91-B-30022, issued by the Department of Transportation, U.S. Coast Guard, for baskets and strainers. In rejecting Kraissl's bid as nonresponsive, the Coast Guard interpreted the protester's use of qualifying phrases in reference to its proposed delivery schedule as creating an ambiguity as to whether Kraissl agreed to the IFB delivery completion requirement of 270 days. Kraissl contends that its bid unambiguously shows its intent to comply with the solicitation specifications for delivery time.

We deny the protest.

The IFB required delivery of all shipments to be completed within 270 days after contract award. It specifically provided that "[o]ffers that propose delivery that will not clearly fall within the applicable required delivery period . . . will be considered nonresponsive and rejected." The Coast Guard rejected Kraissl's bid as nonresponsive because in its view the bid and its accompanying literature did not clearly bind the bidder to a delivery schedule of 270 days. The agency argues that ambiguous language contained in the bid

and a 7-page cover letter entitled "Quotation" qualify the required delivery schedule contained in the solicitation.

On page 18 of its bid, Kraissl proposed the following delivery schedule:

"Current delivery leadtime within 270 calendar days; Significant 5000 lb. minimum partial shipments to commence 12-14 weeks after receipt of order, followed by 5 more shipments approximately every 4-6 weeks, as long as complete shipment is accepted before December 31, 1991."

On page 7 of its cover letter, Kraissl stated:

"Current delivery leadtime estimated to be within 270 calendar days; Significant 5000 lb. minimum partial shipments will commence approximately 12-14 weeks after receipt of order, followed by 5 more shipments of approximately one every 4-6 weeks, based on acceptance of each shipment by you."

The Coast Guard argues that these statements, because of their ambiguity and inconsistency, fail to bind Kraissl unequivocally to a firm delivery schedule of 270 days.

Kraissl argues that the language and December 31 deadline set forth on page 18 of its bid demonstrate its clear intent to comply with the IFB's delivery schedule. The other references to delivery, Kraissl argues, were made merely as an attempt to approximate the timing and number of shipments to be made before the 270-day period expires. Kraissl contends that the December 31 delivery date proposed in its bid in fact would provide the agency with earlier delivery than required by the IFB, so long as award was not made before April 8.

Responsiveness is determined as of the time of bid opening. Johnson Moving & Storage Co., B-221826, Mar. 19, 1986, 86-1 CPD ¶ 273. In order to be responsive, a bid as submitted must represent an unequivocal offer to perform the exact thing called for in the solicitation, so that government acceptance of the bid legally binds the bidder to perform in accordance with all of the material terms of the solicitation. Flex-Key Corp., B-229630, Dec. 10, 1987, 87-2 CPD ¶ 580. An IFB delivery schedule is a material requirement of the solicitation and where the inclusion of a qualification in a bid has the effect of allowing delivery later than required by the IFB, the bid is nonresponsive and must be rejected. See Federal Acquisition Regulation (FAR) § 14.404-2(c); General Regulator, B-237047, Jan. 29, 1990, 90-1 CPD ¶ 122.

The issue here is whether the language in its bid bound Kraissl to complete delivery within 270 days after contract award as required by the IFB. We find that Kraissl's bid did not unequivocally bind the firm to perform in accordance with the IFB due to Kraissl's specification of a delivery completion date which might not satisfy the 270-day delivery requirement.

As noted above, Kraissl's bid offered "[c]urrent delivery leadtime within 270 calendar days; . . . as long as complete shipment is accepted before December 31, 1991." The delivery term thus is conditioned (by the language following the colon) on acceptance by the government of the complete shipment by December 31. Since acceptance occurs after delivery, the language appears to indicate an intention to deliver no later than December 31; this is how Kraissl says its offer should be read.


In order for a December 31 delivery date to satisfy the IFB's 270-day delivery requirement, Kraissl recognizes that the contract could not have been awarded before early April.^{1/} The IFB did not specify a date by which award would be made and it was undetermined at the time of bid opening on February 20 when the contract would be awarded. In order to be responsive to the delivery requirements, bidders had to commit themselves to completing delivery within 270 days without limitation as to a specific award date. Thus, for example, if the contract had been awarded on March 1, delivery would have had to be completed by November 26 in order to satisfy the 270-day delivery requirement. The protester's bid, by promising only that delivery would be completed by December 31, did not unequivocally agree to delivery within the required 270 days, and therefore was properly rejected as nonresponsive.^{2/} FAR § 14.404-2(c); General Regulator, B-237047, supra.

^{1/} According to our calculations, the date which is 270 days prior to December 31 is April 6, not April 7 as Kraissl states. As a result, if award were made on April 4 or earlier, delivery would be required before December 31 to meet the 270-day schedule.

^{2/} Since we find Kraissl's bid to be nonresponsive on this ground, we need not address the Coast Guard's additional arguments that the bid is nonresponsive because it conditioned the delivery schedule upon the agency's acceptance of each shipment; stated that "[q]uotations [are] subject to change without notice"; and failed to include or incorporate certain pages of the IFB with its bid, most notably, page 17, which contained the required delivery schedule.

Kraissl also argues that because its bid is 30 percent less than the next highest bid, the government would benefit greatly from the savings achieved by deeming its bid responsive and awarding it the contract. However, a nonresponsive bid may not be accepted, even if the bid would provide savings to the government, because the public interest in maintaining the integrity of the competitive bidding process outweighs any monetary benefit to be obtained from waiving material bidding deficiencies. Sac & Fox Indus., Ltd., B-231873, Sept. 15, 1988, 88-2 CPD ¶ 250.

The protest is denied.


for James F. Hinchman
General Counsel