



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Chrysler Corporation

File: B-249492

Date: October 19, 1992

F.R. Henderson for the protester.
Herbert F. Kelley, Jr., Esq., and Major Bobby G. Henry, Jr.,
Department of the Army, for the agency.
Victoria McDermott, Aldo A. Benejam, Esq., and Andrew T.
Pogany, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Where bidder offered a delivery schedule which failed to unambiguously commit the bidder to the required delivery period contained in the solicitation, bid was properly rejected as nonresponsive.

DECISION

Chrysler Corporation protests the rejection of its bid under invitation for bids (IFB) No. DAKF40-92-B-0039, issued by the Department of the Army, for a quantity of light utility vehicles. The Army rejected Chrysler's bid as nonresponsive because the firm took exception to the IFB's required delivery terms.

We deny the protest.

The IFB, issued April 14, 1992, required bidders to insert unit and extended, firm, fixed-prices for each of the four different types of utility vehicles represented by separate contract line item numbers (CLIN) in the IFB. The IFB contained Federal Acquisition Regulation (FAR) § 52.212-2, entitled "Desired and Required Time of Delivery," which stated that the government "desired" delivery of all required vehicles within 60 days after contract award; the IFB required bidders unable to meet the 60-day delivery schedule to deliver all vehicles no later than 90 days after contract award. The IFB cautioned that the bidders' delivery schedules must not extend beyond the required 90-day delivery period, and that any bids containing later delivery schedules would be rejected as nonresponsive.

Chrysler only submitted prices for CLINs 0001 and 0004 on several pages marked "CHRYSLER CORPORATION." The first of those pages instructed the agency to "REFER TO ATTACHED CONTINUATION SHEETS; FOR ITEM, UNIT PRICES OFFERED, CLARIFICATIONS AND OTHER REQUIRED DATA." Page No. 4 of Chrysler's bid package contained the following statement under its "REMARKS/CLARIFICATIONS":

"SHIPMENTS: 90 Days; with Special Body Installation - 90-120 days."

After reviewing the protester's bid package, the contracting officer determined that Chrysler's "SHIPMENTS" terms quoted above materially deviated from the IFB's delivery requirement, *i.e.*, that those terms failed to bind Chrysler unequivocally to a firm 90-day delivery schedule. The Army found that by qualifying the IFB's delivery schedule with its own "shipments" terms, Chrysler failed to bind itself to the IFB's 90-day delivery schedule. In a July 13, 1992, letter, the agency rejected Chrysler's bid as nonresponsive. This protest followed.

Chrysler argues that its bid demonstrates its clear intent to comply with the IFB's delivery schedule. The protester asserts that since it was the low bidder for CLIN 0001, it should have received the award for that item. The protester essentially maintains that the 90- to 120-day delivery schedule in its bid refers to CLINs 0002 and 0003, not to CLIN 0001 for which Chrysler allegedly submitted the lowest prices.

Responsiveness is determined as of the time of bid opening. The Kraissl Co., B-243646, Aug. 1, 1991, 91-2 CPD ¶ 113. 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's 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 FAR § 14.404-2(c); Banks Ship Rigging Corp., B-239853, Sept. 4, 1990, 90-2 CPD ¶ 181.

We find that Chrysler's bid did not unequivocally bind the firm to perform in accordance with the IFB's required delivery schedule. The IFB clearly requires "delivery" of the required vehicles within 90 days after contract award, not "shipments"--*i.e.*, delivery of the vehicles must be complete, at the latest, within 90 days. Since Chrysler's "shipments" terms would allow delivery of the vehicles later

than required by the IFB, its bid was properly rejected as nonresponsive. See Delta Scientific Corp., B-233485, Nov. 23, 1988, 88-2 CPD ¶ 516.

Although the protester states that the "90-120 days" shipment schedule did not apply to CLIN 0001, no such explanation appears on the face of its bid. In any case, the IFB's required 90-day delivery schedule applied to all CLINs, regardless of which CLINs the protester bid on. Since Chrysler's "shipments" terms did not commit Chrysler to delivering the vehicles within the IFB's required 90-day delivery schedule, Chrysler's bid was properly rejected as nonresponsive.¹

The protest is denied.


for James F. Hinchman
General Counsel

¹Since we find that the agency properly rejected Chrysler's bid as nonresponsive for failure to comply with the solicitation's minimum delivery terms, we need not address the protester's additional contentions that the agency improperly rejected Chrysler's bid as nonresponsive for other reasons. The protester also argues that the agency violated certain regulations pertaining to the purchase of automotive vehicles by the government. Since the protester's bid was properly rejected as nonresponsive, however, Chrysler is not an interested party under our Bid Protest Regulations to raise this issue. See 4 C.F.R. § 21.0(a) (1992); Municipal Leasing Sys. Inc. B-242648.2, May 21, 1991, 91-1 CPD ¶ 495 (bidder whose bid was properly rejected as nonresponsive is not an interested party to challenge cancellation of solicitation). Even if we were to ultimately agree with Chrysler on that issue, the firm would not be in line for award.