



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John P. Ingram, Jr. & Associates, Inc.

File: B-250548

Date: February 9, 1993

Sherman S.M. Wong, Esq., Gibbs, Giden, Locher & Fleming, for the protester.
Michael M. Badiely for Roman-Ford General Contractor, an interested party.
Robert L. Neary, Jr., Department of Veterans Affairs, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where bidder acknowledges amendment to solicitation changing, among other things, the minimum bid acceptance period from 60 to 90 calendar days, but inserts 60 in the bid form blank for proposing an acceptance period, the bid is nonresponsive, since the offered bid acceptance period, a material solicitation requirement, is at best ambiguous. Alaska Mechanical, Inc., B-225260.2, Feb. 25, 1987, 87-1 CPD ¶ 216; RG & B Contractors, Inc.--Recon., B-225260.4; B-225260.5, Apr. 20, 1987, 87-1 CPD ¶ 425; and Ingenieria Y Construcciones Omega, B-233277, Jan. 25, 1989, 89-1 CPD ¶ 85 are overruled.

DECISION

John P. Ingram, Jr. & Associates, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 9219-AE, issued by the Department of Veterans Affairs (VA), for "Phase IV" impact renovation at the VA Medical Center, Long Beach California.

We deny the protest.

VA issued the IFB on August 10, 1992, with a minimum bid acceptance period of 60 calendar days. Amendment No. 1, dated September 4, changed, among other things, the minimum bid acceptance period to 90 calendar days. Bid opening was on September 17, and Ingram was the low bidder. In its bid, Ingram inserted 60 days in the blank provided on Standard Form 1442 bid form as its bid acceptance period and

acknowledged the amendment that changed the minimum bid acceptance period to 90 days.

VA rejected Ingram's bid as nonresponsive because its offered bid acceptance period was considered ambiguous; under one reasonable interpretation of Ingram's bid, the offer of a 60 day bid acceptance period was less than the 90 day period required by the IFB. Ingram, citing Alaska Mechanical, Inc., B-225260,2, Feb. 25, 1987, 87-1 CPD ¶ 216, argues that the acknowledgment of the amendment clearly evidenced its intent to offer the required 90 day bid acceptance period and its bid was therefore responsive.

To be responsive, a bid must show on its face at the time of bid opening that it is an unqualified offer to comply with all the material requirements of the solicitation and that the bidder intends to be bound by the government's terms as set forth in the solicitation. M & G Servs., Inc., B-244531, June 27, 1991, 91-1 CPD ¶ 612. The bid acceptance period is one of the material IFB requirements. See General Elevator Co., Inc., B-226976, Apr. 7, 1987, 87-1 CPD ¶ 385. Thus, when a bidder fails to specify in its bid that it is offering an acceptance period at least as long as the minimum required by the IFB, the bid must be rejected as nonresponsive. Id. Similarly, a bidder who offers conflicting bid acceptance periods creates an ambiguity in the bid, which prevents it from constituting an unqualified offer to comply with the IFB's bid acceptance period requirement. The Ramirez Co. and Zenon Constr. Corp., B-233204, Jan. 27, 1989, 89-1 CPD ¶ 91; McGrail Equip. Co., Inc., B-222091, Mar. 26, 1986, 86-1 CPD ¶ 293; Cardkey Sys., B-220668, Jan. 29, 1986, 86-1 CPD ¶ 105.

The reason that bids must comply with the required bid acceptance period is so all bidders 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 (regardless of whether by accident or design) would enjoy an unfair competitive advantage because it would be able to refuse the award after its bid acceptance period expired should it decide that it no longer wanted the award, for example, because of unanticipated cost increases, or determine whether to extend its bid acceptance period after competing bids have been exposed. General Elevator Co., Inc., supra.

As noted by the protester, in our decision in Alaska Mechanical, we found responsive a bid virtually identical to Ingram's; that is, the bidder in that case acknowledged an amendment extending the minimum bid acceptance period to 90 days but inserted 60 days as its bid acceptance period on the bid form. We held that the bid was responsive because by acknowledging the amendment, the bidder had accepted the

90 day bid acceptance period, since the insertion of 60 days in the original bid form only showed compliance with the acceptance period then desired by the agency. We denied a request for reconsideration of Alaska Mechanical in RG & B Contractors, Inc.--Recon., B-225260.4; B-225260.5, Apr. 20, 1987, 87-1 CPD ¶ 425, stating that it was only reasonable to conclude that the bidder intended to comply with the 90 day acceptance period requirement and therefore the bid was not ambiguous, since it was not subject to more than one reasonable interpretation.¹ The decision in Alaska Mechanical was followed in Ingenieria Y Construcciones Omega, B-233277, Jan. 25, 1989, 89-1 CPD ¶ 85, which also involved a bidder who completed the original bid acceptance period on the original bid schedule, but acknowledged the amendment incorporating the required longer bid acceptance period.

Based on the arguments presented in this case, we no longer find the reasoning in Alaska Mechanical to be sound. While it is true that the specific acknowledgement of an amendment generally obligates a bidder to perform all work as substantively changed in the amendment, Rocky Ridge Contractors, Inc., B-224862, Dec. 19, 1986, 86-2 CPD ¶ 691, a bid should be considered nonresponsive where the bid also contains a provision completed by the bidder that creates an ambiguity as to whether the bid constitutes an unqualified

¹The Alaska Mechanical and RG & B decisions cited as authority Walsky Constr. Co. et al., B-216571 et al., May 17, 1985, 85-1 CPD ¶ 562, a case which is factually distinguishable. In that case, the agency issued an ambiguous solicitation with regard to the bid acceptance period. The agency filled in an erroneous acceptance period on the bid form while elsewhere designating a longer bid acceptance period. It issued an amendment clarifying the bid acceptance period, but did not require that bids be submitted on a revised bid form. The low bidder in Walsky acknowledged the amendment and submitted its bid on the original bid form with the erroneous bid acceptance period. We found it reasonable to conclude that the low bidder had agreed to comply with the amended bid acceptance period, and that the use of the old bid form was obviously an oversight. The low bidder did not itself fill in the erroneous bid acceptance period, and we concluded that the revised form, with the proper bid acceptance period, was incorporated into its bid when the bidder acknowledged the amendment.

offer to perform the work as changed by the amendment. See Environmental Health Research & Testing, Inc., B-246601, Mar. 10, 1992, 92-1 CPD ¶ 274; Cooper Sportswear Mfg. Co., Inc., B-238998.5, Sept. 18, 1990, 90-2 CPD ¶ 225; J.D. Bertolini Indus., Ltd., B-231598, Sept. 14, 1988, 88-2 CPD ¶ 245; and E.H. Morrill Co., 63 Comp. Gen. 348 (1984), 84-1 CPD ¶ 508 (bids are nonresponsive, notwithstanding the acknowledgement of an amendment adding additional work, where the bid is submitted on the unamended bid schedule that did not incorporate the work added by the amendment; it was unclear under the circumstances whether the bidders bound themselves to perform the new work);² Banks Ship Rigging Corp., B-239853, Sept. 4, 1990, 90-2 CPD ¶ 181 and Terra Vac, Inc., B-241643, Feb. 7, 1991, 91-1 CPD ¶ 140, recon. denied, B-241643.2, June 21, 1991, 91-1 CPD ¶ 588 (bids that state initial delivery date, rather than the more restrictive delivery date added by amendment, are nonresponsive, notwithstanding that the bidders acknowledged the amendment revising the delivery date).³

Here, although Ingram acknowledged the amendment, it inserted the number 60 in the blank on the bid form designating an alternate bid acceptance period. Thus, there was substantial doubt whether the bid bound Ingram to a 90 day bid acceptance period. We find the bid was ambiguous.

Although Ingram has offered an affidavit from the official who prepared the bid in explanation of the ambiguity, the responsiveness of a bid must be ascertained from the bid documents themselves, not from clarifications provided by the bidder after bids have been opened and prices exposed. Crash Rescue Equip. Serv., Inc., B-245653, Jan. 16, 1992, 92-1 CPD ¶ 85. It is axiomatic that such explanations cannot be relied on in determining the responsiveness of the bid, since it would be prejudicial to the other competitors to permit a bidder to elect whether or not it wishes to


²Cf. Inland Serv. Corp., B-249590, Dec. 7, 1992, 92-2 CPD ¶ ___ and Rocky Ridge Contractors, Inc., *supra*, (bids submitted on unamended bid schedule are responsive where the bidders acknowledged the amendment adding the revised bid schedule and the revised schedule added no, or an insignificant amount of, new work).

³Cf. Bruce Indus., Inc., 68 Comp. Gen. 196 (1989), 89-1 CPD ¶ 86 (bid on an IFB that incorporates a previous IFB is responsive, even though pages of the former IFB with a different delivery date were included with the bid; the bid itself bound the bidder to the revised delivery date, since the bidder did not specifically condition the bid on the former IFB's delivery date).

extend its bid. See The Ramirez Co. and Zenon Constr. Corp., supra.

In sum, we believe that by inserting the superseded bid acceptance period in its bid and acknowledging the amendment changing the acceptance period to 90 days, Ingram created an ambiguity in its bid which at best makes its bid unclear as to whether it intended to comply with the new bid acceptance period. See Cooper Sportswear Mfg. Co., Inc., supra; The Ramirez Co. and Zenon Constr. Corp., supra. Under these circumstances, we find that VA properly rejected Ingram's bid as nonresponsive. Id. Our decisions in Alaska Mechanical, Inc., supra, RG & B Contractors, Inc.--Recon., supra, and Ingenieria Y Construcciones Omega, supra, are overruled.

The protest is denied.

for 
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