



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Image Contracting

File: B-253038

Date: August 11, 1993

George W. Stringe for the protester.
Tufik Habib for Video & Communication Network, an interested party.
Albert J. Joyce, Esq., Panama Canal Commission, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bidder's failure to designate to which of two locations it intended to deliver did not render its bid nonresponsive where invitation for bids permitted delivery to either location and bidder committed to deliver to one of the two by signing its bid.

DECISION

Image Contracting protests the rejection of its bid under invitation for bids (IFB) No. CSC-95036-MJ-29, issued by the Panama Canal Commission for video transmission links and related equipment. The Commission rejected the protester's bid as nonresponsive because the bid failed to specify the delivery terms that Image Contracting was offering. The protester contends that since it took no exception to the delivery terms stated in the IFB, its bid was responsive.¹

We sustain the protest.

The IFB, as amended, requested bids on a brand name or equal basis for two sets of video transmission links (transmitters and receivers), four duplex subcarriers, four weatherproof options to be used with the first items, and four weatherproof junction boxes. Bidders were instructed to complete and return solicitation sections A (Standard Form [SF] 33), B (Supplies and Prices), F (Deliveries or Performance), and

¹The protester also argues that the awardee's price was unreasonable. Since we sustain Image Contracting's protest on the first ground, we need not consider this argument.

K (Representations and Certifications). Under Section F, with regard to delivery, the IFB provided as follows:

"TIME OF DELIVERY

The [g]overnment requires delivery of all items as follows:

*	F.O.B. DESTINATION Panama Canal Commission Electronics Branch Contract No. CSC-95036-MJ-29 Unit 2300 APO AA 34011	F.O.B. DESTINATION Panama Canal Commission Electronics Branch Building 40 Contract No. CSC-95036-MJ-29 Balboa Industrial Area Panama, Republic of Panama
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/ /	Within 45 days after receipt of notice of award	- or -	/ /	Within 45 days after receipt of notice of award"
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Of the three bids received at bid opening on March 2, 1993, which offered prices on all items,² Image Contracting's price of \$28,280 was second low. The contracting officer rejected the low bid as nonresponsive because the bidder had taken exception to the IFB's delivery terms by crossing out "45" and inserting "60" in its place. Elimination of this bid moved Image Contracting's bid into line for award. The protester had failed to return Section F with its bid, however. The contracting officer determined that by failing to check either of the boxes under the Time of Delivery clause, Image Contracting had failed to specify the terms of delivery that it was offering, and that its bid was therefore nonresponsive. On April 2, the contracting officer awarded a contract to Video & Communication Network.

To be responsive to an IFB's delivery requirements, which are a material element of the solicitation, a bidder must agree to deliver to the location and within the period of time required by the solicitation. See Copley Int'l Trading Partners; Western States Elec., Inc., B-248751; B-248751.3, Sept. 10, 1992, 92-2 CPD ¶ 167. Here, the Commission argues that Image Contracting's bid was nonresponsive because (1) its failure to return Section F raised doubts as to whether it intended to comply with either delivery option; and (2) the bid failed to specify to which of the two locations Image Contracting intended to deliver. As explained below, we think that the protester committed itself to the agency's delivery requirements by returning a signed copy of the SF 33 and that its bid was therefore responsive.

²One additional bid, which did not include a price for item No. 4, was received; since the solicitation provided that any bid which failed to quote on all items would be rejected as nonresponsive, this bid was not considered for award.

With regard to the Commission's first argument, failure to return part of a bid package does not automatically render a bid nonresponsive. Rather, the general rule is that where a bidder fails to return with its bid all of the documents which were part of the IFB, the bid must be submitted in such a form that acceptance would create a valid and binding contract requiring the bidder to perform in accordance with all the material terms and conditions of the IFB. Werres Corp., B-211870, Aug. 23, 1983, 83-2 CPD ¶ 243. Here, the protester submitted a signed SF 33, which included a Table of Contents listing all sections comprising the bidding documents. Image Contracting's return of the signed SF 33 served to incorporate all the provisions listed in the Table of Contents, including the delivery clause. Id. Thus, by returning the signed SF 33, the protester agreed to be bound by the terms of Section F despite the fact that it did not return Section F itself.

Further, item No. 12 of the SF 33 provides that:

"the undersigned agrees, if this offer is accepted within [the designated period] to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule."

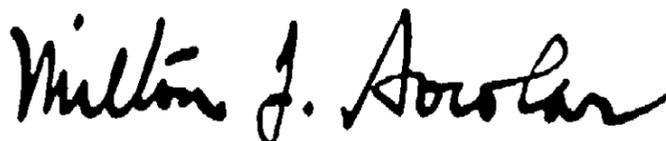
Thus, by submitting a signed SF 33, the protester agreed that if its bid were accepted, it would deliver the items to "the designated point(s), within the time specified" in the IFB--that is, to one of the two delivery points designated in the solicitation (i.e., Panama or the APO address) within the specified period of 45 days. Given this agreement to the explicit delivery terms of the IFB, there is no merit to the agency's contention--for which it cites no authority--that Image Contracting failed to commit itself to either of the delivery alternatives in the IFB.

With regard to the Commission's second argument--i.e., that the protester's bid was nonresponsive because it failed to identify to which of the two locations delivery would be made--we do not think that it was critical for the bidder to designate one of the two locations in its bid since the number of days within which delivery was required was the same for both locations. Although an indication as to which of the two locations it intended to deliver might have been critical for purposes of evaluating Image Contracting's price had the IFB provided for the addition of a cost differential to bids specifying delivery to the APO address to cover the expense to the government of shipping the items from the mainland United States to Panama, the IFB in question did not provide for the addition of such a differential to bids designating delivery to the APO address.

Accordingly, the protester's failure to select a delivery location by checking one of the boxes in the Time of Delivery clause had no effect on evaluating bid prices and determining the lowest priced bid.

In view of our conclusion that Image Contracting's bid was responsive to the IFB's delivery terms, we recommend that the Commission terminate the contract awarded to Video & Communication Network and make award to Image Contracting, if otherwise appropriate. In addition, we find that Image Contracting is entitled to recover its costs of filing and pursuing the protest. In accordance with 4 C.F.R. § 21.3(f) (1993), the protester's claim for such costs, detailing the time expended and the costs incurred, must be submitted to the agency within 60 days after receipt of this decision.

The protest is sustained.



Acting Comptroller General
of the United States