



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delta Construction Co., Inc.

File: B-258518

Date: December 12, 1994

Robert Thompson for the protester.
Janice M. Dempsey and Clarence Austin, Department of
Agriculture, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Where invitation for bids listed two different bid opening times, agency was not required to consider bid which was hand delivered after the agency had proceeded to open bids at the earlier of the two times listed, where the protester had failed to inquire of the contracting agency, prior to bid opening, which of the bid opening times listed in the solicitation package was correct.

DECISION

Delta Construction Co., Inc. protests the rejection of its bid as late under invitation for bids (IFB) No. SCS-2798-IL-94, issued by the Department of Agriculture's Soil Conservation Service for performance of the Big Sandy Creek riprap emergency watershed protection project in Scott County, Illinois. Delta argues that the agency should have considered its bid.

We deny the protest.

The solicitation was issued on September 2, 1994, on a version of standard form (SF) 1442, and was accompanied by a cover sheet titled, "Notes to Bidders." The cover sheet informed prospective bidders that bids must arrive "at the time shown in block 13a to be eligible for consideration," and block 13a of the solicitation listed the bid opening day and time as Wednesday, September 7, at 1 p.m. However, the cover sheet elsewhere stated, as did block 10 of the solicitation, that the bid opening time was 1:45 p.m.

Three bids were received by 1 p.m., at which time the contracting officer commenced opening bids. Delta hand delivered its bid between 1:15 and 1:30 p.m., and was apparently informed that its bid could not be accepted after 1 p.m. Delta expressed its disagreement with this decision, and informed the bid opening official that its bid would have been low. The bid opening official agreed to refer the matter to the contracting officer, and Delta left its bid with the contracting agency. Later that day, the agency returned Delta's unopened bid by mail, along with a letter notifying the firm that its bid had been rejected as late. Award was made to McIntire & Company, the low bidder of record, on September 8, and this protest followed. Performance of the contract has now been completed. Delta essentially argues that, because the agency issued a defective solicitation, Delta's bid should have been considered.

It is clear that the contracting agency's drafting of this solicitation was careless, and that the contracting officer should have clarified the bid opening time prior to bid opening.¹ On the other hand, Delta does not explain its decision to ignore the language in the solicitation package which directs bidders to submit their bids by 1 p.m., or its failure to query the contracting officer about the bid opening time discrepancy prior to bid opening.²

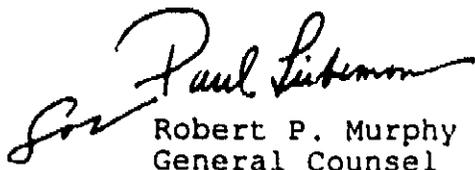
Where a patent discrepancy--such as two inconsistent bid opening times--exists in an IFB, it is incumbent upon the bidder to ask for an explanation prior to submitting its bid, and a reasonable bidder may not simply act on its own assumptions regarding a clearly defective requirement. See Avantek, Inc., 55 Comp. Gen. 735 (1976), 76-1 CPD ¶ 75; Merando, Inc. v. United States, 475 F.2d 601 (Ct. Cl. 1973); Space Corp. v. United States, 470 F.2d 536 (Ct. Cl. 1972); Beacon Constr. Co. of Massachusetts v. United States, 314 F.2d 501 (Ct. Cl. 1963). See also B-135933, June 26, 1958, in which we found that patent inconsistencies in an IFB regarding the correct bid opening time should be brought to

¹The contracting officer states that, at the time of bid opening, he thought the only erroneous bid opening time was stated on "a general information sheet" (the cover sheet) and not on the IFB.

²The awardee states that it noticed the conflict in the bid opening times and clarified the matter with the contracting officer prior to bid opening time.

the agency's attention prior to bid opening.¹ Delta significantly contributed to the problem here by assuming that the correct bid opening time was 1:45 p.m., despite the IFB's explicit provision for two inconsistent bid opening times. In view of the protester's failure to act prudently in this regard, our Office will not object to the agency's refusal to consider the protester's bid. Avantek, Inc., supra.

The protest is denied.


Robert P. Murphy
General Counsel

¹To be timely, any protest against the IFB's deficient identification of the bid opening time had to have been filed prior to bid opening. See 4 C.F.R. § 21.2(a)(1) (1994); Avantek, Inc., supra.