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DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-192845 DATE: February 7, 1979

MATTER OF: National Reporting Co. DLG-00565

DIGEST:

[Protest Over Bid Being Declared Nonresponsive]

1. Protest filed on tenth working day after basis for protest is known is timely.

2. Bid submitted by bidder which acknowledged receipt of all amendments to IFB and which contained a bid on an item deleted by amendment is nonresponsive.

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National Reporting Company, Inc. (National), protests the award of National Transportation Safety Board Court Reporting contract NTSB 78002-F to Hoover Reporting Company (Hoover). National contends that the contracting officer (CO) misconstrued the award clause of the invitation for bids (IFB) and that the award to Hoover was erroneous because National was the low bidder. In response, the CO and Hoover claim that the protest is untimely; the bid was nonresponsive; and the award clause was properly construed.

DLG-00827

The agency and Hoover claim that this protest is untimely because National received actual notification that the award had been made to Hoover on August 25, 1978, and that the protest was not received in this Office until September 11, 1978. National disputes the fact that it received notification this early. However, even assuming that National received notification as early as August 25, the protest is timely under our Bid Protest Procedures. 4 C.F.R. § 20.2(b)(1) (1978) provides that protests such as that in the instant case must be filed "not later than 10 days after the basis for the protest is known." 4 C.F.R. § 20.0 (a) (1978) defines days as "working days of the Federal Government." Weekends and holidays, in this instance Labor Day, are excluded from the calculation. National's protest was filed on the tenth working day and therefore is timely.

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The agency and Hoover maintain that National's failure to erase a quote on an item accompanying a provision which had been deleted by amendment rendered National's bid nonresponsive. We agree.

The IFB required bidders to submit bids on several distinct items. One such item--"proceeding attendance fee"--was originally part of Article XLII. National's bid on this item, prior to any amendments to the IFB, was $100 for fiscal year 1979 and $125 for fiscal year 1980.

The IFB was amended three times. The cumulative effect of amendments 1 and 3 was to completely delete the "proceeding attendance fee" item of Article XLII. In its place, a guaranteed minimum payment clause was inserted in Article XXVI. The guaranteed minimum payment clause provided that bidders, in certain circumstances, were guaranteed $50 per day for attending proceedings outside the Washington, D. C., metropolitan area.

It is uncontested that National acknowledged receipt of all amendments to the IFB. However, National inadvertently failed to cross out its original bids under the "proceeding attendance fee" item. As a result, when National submitted its bid, the deleted "proceeding attendance fee" item contained bids of $100 for fiscal year 1979 and $125 for fiscal year 1980. The agency and Hoover maintain that this failure to erase the figures accompanying the deleted provision rendered National's bid nonresponsive.

The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and whether, upon acceptance, it will bind the contractor to perform in accordance with all the terms and conditions thereof. Unless something on the face of the bid, or specifically made a part thereof, either limits, reduces or modifies the obligation of the prospective contractor to perform in accordance with the terms of the invitation, it is responsive. 49 Comp. Gen. 553,556 (1970).

A bidder's intent to comply with an invitation for bids must be discernible from the face of the bid at the time of bid opening. Engineering Transportation Company, Inc., B-185609, July 6, 1976, 76-2 CPD 10. In the instant case, it is unclear from the face of National's bid whether National intended to be bound to the $50 minimum payment clause in Article XXVI, as added by amendment, or whether "National" intended to be paid the amounts specified in the deleted item. Thus, we cannot "say that the bid, as submitted, was an offer to perform, without exception, the exact thing called for in the invitation. It does not matter whether National's failure to comply with the requirements of the IFB was due to inadvertence. 45 Comp. Gen. 434 (1966). Its submission of a bid on an item which had been deleted by amendment rendered its bid nonresponsive.

In view of our conclusion that National's bid was properly rejected as nonresponsive, it is not necessary to consider National's contention that the award clause was misconstrued by the contracting officer.

Accordingly, the protest is denied.

Deputy Comptroller General
of the United States