Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sundt Corporation

File: B-274203

Date: November 5, 1996

Henry M. Moore, Esq., Shumate, Kraftson & Sparrow, P.C., and Richard D. Corona, Esq., Corona & Balistreri, for the protester.
Davide Golia, Esq., Marks & Golia, LLP, for Daley Corporation-California Commercial Asphalt Corporation, an intervenor.
Frank K. Kotarski, Esq., Christopher M. Bellomy, Esq., and George N. Brezna, Esq., Department of the Navy, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where bidder acknowledges solicitation amendment changing the minimum bid acceptance period from 90 to 120 calendar days, but inserts 90 in the bid form blank for proposing an acceptance period, the bid is ambiguous as to the offered bid acceptance period, a material solicitation requirement, and is therefore nonresponsive.

DECISION

Sundt Corporation protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 68711-94-B-1587, issued by the Department of the Navy for certain construction at the Marine Corps Air Station at Miramar, California.

We deny the protest.

The Navy issued the IFB on July 1, 1996, with a minimum bid acceptance period of 90 calendar days. Amendment No. 0001, issued July 18, changed, among other things, the minimum bid acceptance period to 120 calendar days. Bid opening was on August 1, and Sundt was the low bidder. In its bid, Sundt inserted 90 days in the blank provided on Standard Form (SF) 1442 as its bid acceptance period and included an acknowledgment of the amendment that changed the minimum bid acceptance period to 120 days.

The Navy, while recognizing that Sundt had acknowledged amendment No. 0001, rejected Sundt's bid as nonresponsive because it failed to offer the required 120-day bid acceptance period. The Navy, relying on our decision John P. Ingram, Jr. & Assocs., Inc., B-250548, Feb. 9, 1993, 93-1 CPD ¶ 117, maintains that one reasonable interpretation is that Sundt offered a 90-day bid acceptance period, and that at best, Sundt's bid was ambiguous.

Sundt asserts that the Ingram decision is inapplicable here because Sundt not only acknowledged the amendment changing the bid acceptance period on the unrevised SF 1442, but it included in its offer the actual amendment itself, executed by its authorized agent. Sundt cites Walsky Constr. Co., et al., B-216571 et al., May 17, 1985, 85-1 CPD ¶ 562 to support its position that acknowledgment of the amendment clearly evidenced its intent to offer the required 120-day bid acceptance period, and its bid was therefore responsive.

We believe the protester's reliance on the Walsky decision is misplaced and that the Ingram decision is controlling here. In Walsky, the agency erroneously inserted "10" in the bid acceptance period blank in the solicitation which is normally to be completed by the bidder. This resulted in an obvious discrepancy with another solicitation provision stating that bids offering less than 30 days for acceptance would be rejected. The agency then issued an amendment changing the bid acceptance period to 60 days. This amendment was acknowledged by the low bidder, but the bid was submitted on the original incorrect form. We found that the bid was not ambiguous, and that it was reasonable to assume that because the low bidder acknowledged the amendment, it intended to comply with the amended 60-day bid acceptance period requirement, and the use of the unamended form was merely an oversight.

In the present case, as in Ingram, the bidder acknowledged the amendment extending the bid acceptance period to 120 days, but also inserted the number 90 in the blank on the bid form in the block which permits a bidder to designate an alternate bid acceptance period. Thus, unlike the situation in Walsky, here the bidder rather than the agency made the entry which led the Navy to doubt whether the bid provided a 120-day bid acceptance period.

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. 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 that offers conflicting bid acceptance periods creates an

ambiguity in the bid, which prevents it from being in unqualified compliance with the IFB's bid acceptance period requirement.[1] 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.

Here, we agree with the Navy that Sundt's bid was ambiguous. Although the acknowledged amendment specified a 120-day acceptance period, the bidder also inserted 90 days on SF 1442 for its bid acceptance period. Thus, on its face the bid was ambiguous as to what acceptance period was being offered. While Sundt 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.

We also find unconvincing the protester's argument that this situation is factually distinguishable from Ingram because Sundt both acknowledged the amendment on its SF 1442 and included the actual executed amendment in its bid, thus, clearly demonstrating an intention to comply with the revised bid acceptance. The inclusion of the executed amendment in Sundt's bid merely constitutes one of the indicated forms of acknowledging the amendment; it does not alter the ambiguity inherent in the bid that resulted from Sundt's 90-day entry on the SF 1442. While Sundt also argues that the primary responsibility for the ambiguity rests with the agency because the agency revised the acceptance period without revising the

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[1]Bids must comply with the required bid acceptance period so that 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 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.

SF 1442, the agency's failure to provide a revised SF 1442 does not change the fact that it was the protester who created the ambiguity by placing "90" in the blank for the offered bid acceptance period.

The protest is denied.

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