



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Banknote Corporation of America, Inc.

File: B-278514

Date: February 4, 1998

Hopewell H. Darneille, III, Esq., and Brett Bacon, Esq., Verner, Liipfert, Bernhard, McPherson and Hand, for the protester.

Kerry L. Miller, Esq., Government Printing Office, for the agency.

Andrew T. Pogany, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation provision called for a 180-day bid acceptance period and clearly advised bidders to disregard a standard form provision (contained elsewhere in the solicitation) requesting a minimum 60-calendar day bid acceptance period, bid offering a 60-calendar day bid acceptance period was properly rejected as nonresponsive.

DECISION

Banknote Corporation of America, Inc. protests the rejection of its bid as nonresponsive under an invitation for bids (IFB) for Program No. D381-S, issued by the Government Printing Office (GPO) for the printing of social security cards. GPO rejected the bid because it did not contain the minimum bid acceptance period required by the solicitation. We deny the protest.

The IFB was issued on July 17, 1997. Page one of the solicitation provided as follows:

BIDDERS PLEASE NOTE: THE MINIMUM TIME PERIOD FOR ACCEPTANCE OF BIDS ON PROGRAM D381-S BY THE GOVERNMENT IS 180 CALENDAR DAYS. TO BE RESPONSIVE, A BIDDER MUST INSERT IN THE BID ACCEPTANCE PORTION OF GPO FORM 910 A BID ACCEPTANCE PERIOD OF 180 DAYS OR MORE. IT IS CAUTIONED THAT IF THE BIDDER MAKES NO ENTRY A BID ACCEPTANCE PERIOD OF 60 CALENDAR DAYS WILL AUTOMATICALLY BE APPLIED AND THE BID WILL BE RENDERED NONRESPONSIVE.

Form 910, a standard form furnished by GPO to the bidders with the solicitation, stated as follows:

[T]he undersigned agrees, if this bid is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the bidder) from the date for receipt of bids, to furnish the specified items at the price set opposite each item, delivered at the designated point(s), in exact accordance with specifications.

Directly below this language, in boldly blocked format, the standard form stated as follows: "Notice: Failure to provide a 60 day bid acceptance period may result in expiration of your bid prior to award."

Bids were opened on August 15. Banknote was the low bidder with a bid of \$858,600; the only other bidder, American Bank Note Company, bid \$868,400. However, the protester had inserted the number "60" as its bid acceptance period on Form 910. The agency rejected the protester's bid as nonresponsive for failure to offer the 180-day acceptance period called for on page one of the IFB; this protest followed.

The protester principally argues that the IFB was fundamentally defective, and that its bid therefore should not be rejected as nonresponsive, because Form 910 did not cross-reference the 180-day minimum bid acceptance requirement on page one, thereby "causing a classic pitfall to ensnare bidders into a state of nonresponsiveness." In support of its position that it was misled into making its bid nonresponsive to the 180-day minimum acceptance period requirement, the protester cites our decision in 52 Comp. Gen. 842, 845 (1973), in which we stated as follows:

[W]here an invitation contains language specifying a bid acceptance period and another separate provision located elsewhere in the invitation sets forth a minimum bid acceptance period, the two provisions should be cross-referenced in such manner as to specifically direct bidders' attention to the fact that insertion of a shorter period will cause the bid to be rejected.

In that 1973 decision, we concluded that, since the two conflicting provisions were not cross-referenced, the protester had been misled into offering an inadequate acceptance period, and that it therefore would be improper to reject the bid as nonresponsive on this basis. Banknote urges that we reach the same conclusion here.

The agency properly rejected Banknote's bid. Here, unlike in the 1973 case, the solicitation on page one specifically cross-referenced the standard bid acceptance provision of Form 910 and clearly explained how bidders should deal with the conflicting acceptance period provision, i.e., they should disregard the 60-calendar

day provision on Form 910 because the agency required 180 calendar days. There was nothing confusing or unclear about this explanation or about which provision was being referenced.

The protester essentially insists that--under our 1973 decision--the solicitation was required to include a second cross-reference, from Form 910 back to the page one explanation (in addition to the cross-reference from page one to Form 910). Our decision establishes no such requirement. While we concluded that cross-referencing is necessary to eliminate confusion from apparently inconsistent minimum acceptance period provisions, this purpose clearly is served by the unequivocal explanation the agency included in the 180-day requirement on page one. Reasonable bidders, who are expected to scrutinize carefully the entire solicitation package, International Medical Indus., Inc., B-208235, Oct. 29, 1982, 82-2 CPD ¶ 386 at 5, should not have been misled, given the first page's explanation and cross-reference to Form 910. In short, we find that the solicitation was sufficiently clear to enable a bidder to know the required bid acceptance period. See id. at 5-6.

While acknowledging that it is well established that a minimum acceptance period requirement is material and must be met at the time of bid opening, see Perkin-Elmer Corp., 69 Comp. Gen. 27, 29 (1989), 89-2 CPD ¶ 352 at 3, Banknote argues in the alternative that its insertion of 60 days on Form 910 was inadvertent and should be waived as a minor informality. More specifically, it asserts, given the current economic environment of low price inflation, offering a shorter than required acceptance period should not be viewed as conferring any significant competitive advantage, and a low bid offering such a shorter period thus should not be deemed nonresponsive. This argument is without merit. While avoiding the threat of inflation is one reason why bidders may wish to limit the time for accepting their bids, a longer acceptance period obviously also exposes a bidder to greater business risk generally.¹ A bidder which is allowed to specify a shorter acceptance period would have an unfair advantage over its competitors, since it would be able either to refuse award after its bid acceptance period expired, should it decide it no longer wanted the contract (whether because of unanticipated cost increases, market fluctuations, shortages, or better profit opportunities elsewhere), or to extend its bid acceptance period after competing bids have been exposed. See id.

The protest is denied.

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¹Moreover, while the economy as a whole may be experiencing low inflation, particular industries may be subject to inflationary pressures.