



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Temp Air Company, Inc.

File: B-279837

Date: July 2, 1998

Larry D. Harris, Esq., and Sheila C. Stark, Esq., Piper & Marbury, for the protester.
J. Stephen Brophy, Esq., U.S. Coast Guard, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protester's bid was properly rejected as nonresponsive where the rejected bid substituted photocopies of bid schedule pages from the base performance period for pages covering the option periods. The substituted pages did not contain the contract line item numbers covering the option year effort, creating ambiguity about whether the bidder was committed to providing the option year effort, and, if so, at what price. In addition, the substituted pages, in one case, specified a performance period shorter than the option year which the bidder intended the substitute page to cover.
2. Contracting officer's decision not to permit bid correction is reasonable where the bid is nonresponsive on its face, since responsiveness cannot be established after bid opening.

DECISION

Temp Air Company, Inc. protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. DTCTG40-98-B-40002, issued by the Department of Transportation, United States Coast Guard, for operations, maintenance and repair at the United States Coast Guard Yard at Curtis Bay, Maryland. Temp Air argues that the Coast Guard's rejection of its bid was based upon an erroneous conclusion that certain substitute pages used in Temp Air's bid schedule altered material terms of the invitation.

We deny the protest.

The IFB, issued October 17, 1997, contained a bid schedule calling for bids for a 10-month base period followed by four 1-year options, and provided that bids would be evaluated for award by adding the price for all the options to the price for the base period. IFB §§ M.4, M.6. The IFB anticipated award of a fixed-priced contract. In addition, the IFB indicated that award would be made on an "all or

none" basis, and that failure to submit a bid for any item would result in the entire bid being rejected as nonresponsive. IFB § M.5. This procurement was also reserved for exclusive small business participation.

As originally issued, pages 2 through 31 of the IFB contained the bid schedule, comprised of numerous contract line item numbers (CLIN) and sub-CLINs. However, the original version of the IFB bid schedule did not contain a page 23. By amendment No. 0003, issued on December 4, the agency provided the omitted page 23, and issued replacement pages for the schedule pages numbered 4, 10, 16, 22, and 28. The five replacement pages added a new requirement for the contractor to collect recycled paper during the 10-month base period (CLIN 0001AA2), and reflected this added work at the same point in the schedule for each of the 4 option years.¹ The new page 23 added CLIN 0004B1, for Level III work orders for option year 3. The IFB already contained a similar requirement in the 10-month base period, and in option years 1, 2, and 4.

At the December 30, 1997 bid opening, Temp Air was the apparent low bidder based on a conclusion that its bid price was \$6,136,553; the next low bid was submitted by WW Contractors, Inc., with a price of \$6,606,493.19. After bid opening, several events delayed the procurement: (1) there were two agency-level protests from the third low bidder challenging award to either Temp Air or WW Contractors; (2) the contracting specialist noticed several mathematical errors in Temp Air's bid which the company was allowed to correct; and (3) the agency reached an initial conclusion that Temp Air was not responsible--followed by a request for review by the Small Business Administration, which was ultimately withdrawn. The contracting officer explains that because of these intervening activities, it was not until March 2 that he noticed certain problems with the bid that caused him to question its responsiveness. On March 24, the contracting officer determined, in writing, that the bid was nonresponsive and could not be accepted. On April 7, award was made to WW Contractors, Inc., and this protest followed.

Temp Air's bid was viewed as nonresponsive because of the company's handling of the bid schedule replacement pages included in amendment No. 0003. The record shows that while Temp Air acknowledged receipt of amendment No. 0003 on the front of its bid, and used some of the replacement pages provided in the amendment, in two instances--pages 10 and 23--it used neither the pages provided by amendment No. 0003, nor the original schedule pages.

With respect to replacement page 10, which contained CLINs 0002AA1, 0002AA2, and 0002AA3 (all of which represent effort within the first option year), Temp Air instead submitted a completed photocopy of replacement page 4, which contained

¹Thus, the recycled paper requirement was also added under CLINs 0002AA2, 0003AA2, 0004AA2, and 0005AA2.

CLINS 0001AA1, 0001AA2, and 0001AA3 (representing the same effort within the 10-month base performance period). Temp Air inserted this completed photocopy of replacement page 4 in the bid schedule in front of the original page 10, and marked a large "X" over the entirety of the original page 10. Temp Air did not change the page number at the top of the page--it reflected "page 4"--and did not change the CLIN numbers.

Similarly, instead of using amendment No. 0003's page 23 (which was initially omitted from the bid schedule), Temp Air inserted into the schedule at that point a completed photocopy of the bid schedule's page 5, with the page number crossed out, and the number 23 inserted. Page 5 contained CLIN 0001B1, which covered certain effort within the 10-month base performance period, while page 23 (provided for the first time with amendment No. 0003) contained CLIN 0004B1, which covered the same effort in option year three. While in this case Temp Air changed the page number from 5 to 23, it again did not change the CLIN number.

Temp Air argues that the decision to reject its bid as nonresponsive was unreasonable because the contracting officer clearly understood the bid, and also contends that the agency acted improperly by not giving Temp Air an opportunity to correct any problem with its bid caused by the use of these two substitute pages.

The test for responsiveness is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the solicitation, so that upon acceptance the contractor will be bound to perform in accordance with all of the IFB's material terms and conditions. Mike Johnson, Inc., B-271943, Aug. 14, 1996, 96-2 CPD ¶ 66 at 2. The required commitment to the terms of an IFB need not be made in precisely the manner specified by the solicitation; all that is necessary is that the bidder, in some fashion, commit itself to the solicitation's material requirements. Engineering Techs. Assocs., Inc., B-250567, Feb. 10, 1993, 93-1 CPD ¶ 121 at 3-4.

In support of its position that its bid was responsive, Temp Air points to the fact that the contracting officer initially assumed that the photocopied pages were intended as substitutes for pages 10 and 23, and calculated Temp Air's total bid price based on that assumption. The contracting officer's action is not dispositive, however, of the key question: whether, as a legal matter, the bid committed Temp Air to the material requirements of the IFB. Our review of the bid leads us to conclude that it does not contain a legally binding commitment to perform the solicited work in several areas. Specifically, the bid as submitted does not include any recognition of, or prices for, several CLINs. Instead, at the place in the bid schedule where these CLINs should have appeared, Temp Air's bid repeats the CLINs for the same effort in the base period, and in each case repeats the same price for the effort as for the base period effort.

A determination that Temp Air's bid is responsive would require the agency to make the following two assumptions: (1) that the base period CLINs identified on the substitute bid schedule pages can be replaced with the option year CLINs; and (2) that the price stated is not merely a repetition of the price for the base period CLIN, but applies to the option year price as well. In our view, the necessity of these assumptions to determine the responsiveness of the bid illustrates the bid's ambiguity. Since Temp Air's bid at no point identifies the missing CLINs, there is no clear promise to perform the work required by CLINs 0002AA1, 0002AA2, 0002AA3, and 0004B1, rendering the bid nonresponsive. See Lamb Eng'g & Constr. Co., B-261240, Aug. 25, 1995, 95-2 CPD ¶ 87 at 4.

Equally fatal for Temp Air's bid is the text at the top of the bid schedule's page 5, which Temp Air photocopied and used as a substitute for page 23. This text states that the bid applies to the "ten month period from the contract operations date," and when inserted into the bid schedule at page 23, reduces the performance period by 2 months from the full 12-month performance period covered by option year 3. Since Temp Air's bid modifies, or at least casts doubt upon its acceptance of, the option year performance period, the bid must be rejected as nonresponsive. See NVT Techs., Inc., B-256072, B-256072.2, May 6, 1994, 94-1 CPD ¶ 297 at 3.

As a final matter, we disagree with Temp Air's contention that the agency acted improperly because it did not identify this problem immediately after bid opening, and because it did not give the company an opportunity to correct what Temp Air contends is a mere clerical error. Regardless of when the agency understood that the bid was incomplete, the bid could not be made responsive by post-bid opening explanation or correction. Federal Acquisition Regulation § 14.407-3 explains that the authority to permit correction of mistakes in bids may not be used to make nonresponsive bids responsive. Since responsiveness must be determined from the face of the bid itself as of the time of bid opening, to have allowed Temp Air to correct the mistake in its bid would have been tantamount to permitting the firm to submit a new bid. Gladding Braided Prods., B-260885, July 25, 1995, 95-2 CPD ¶ 45 at 4.

The protest is denied.

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