

**DECISION**

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

60138

FILE: B-184542

DATE: November 11, 1975

MATTER OF: Cam Industries, Inc.

97760

**DIGEST:**

Where solicitation contained provision in Standard Form 33 permitting bidders to insert acceptance period of less than 60 days with notation, however, to "See Page C-8" typed at end of provision and page C-8 contained provision stating that bids offering less than 60-day acceptance period would be rejected as nonresponsive, rejection of bid offering 30-day acceptance period was proper. Moreover, since bid was non-responsive it may not be corrected after bid opening since rules permitting correction of mistakes in bids are for application only when bid as submitted is responsive.

Solicitation No. DACW67-75-B-0046 for intake gates and trashracks at the Chief Joseph Dam, Columbia River, Washington, was issued on March 24, 1975, by the Seattle District, United States Army Corps of Engineers.

Bids were opened on May 20, 1975, and Cam Industries, Inc. (Cam), submitted the low bid. However, according to the contracting officer, Cam's bid was considered to be nonresponsive since Cam had qualified its bid by offering a 30-day acceptance period instead of the minimum 60 days required by the solicitation. The record indicates that on July 15, 1975, Cam was advised of the fact that its bid was considered to be nonresponsive. Prior to this, on June 26, 1975, the procuring activity received a letter dated June 19 and postmarked June 25, 1975, from Cam changing its bid acceptance period from 30 to 60 days. No award has been made.

By a letter dated July 18, 1975, Cam protested to this Office. It is Cam's contention that the terms of the solicitation were ambiguous and caused it to make a mistake. Cam contends that the ambiguity stems from the inconsistency between the provisions on pages B-2 and C-8 of the solicitation. Page B-2 contains the following statement:

"In compliance with the above, the undersigned offers and agrees, if this offer is accepted within \_\_\_\_\_ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered, at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule. (See Page C-8)"

Paragraph 42 on page C-8 provides as follows:

"BID ACCEPTANCE PERIOD (1960 APR). Bids offering less than 60 days for acceptance by the Government from the date set for opening of bids will be considered nonresponsive and will be rejected."

It is Cam's position that the above provisions are totally inconsistent in that the provision on page B-2 states that a period less than 60 days is contemplated, whereas the provision on page C-8 states that an acceptance period of less than 60 days is not permitted. Cam states that it was this confusion and ambiguity which led it to include a 30-day acceptance period on page B-2 of its bid. Cam further states that in light of this ambiguity it should be allowed, under section 2-406.3 of the Armed Services Procurement Regulation (ASPR), relating to correction of mistakes, other than clerical mistakes, alleged after opening of bids and prior to award, to correct the mistake in its bid since it was clear from the face of the bid that a mistake had been made.

This Office has consistently held that a provision in an invitation which requires that a bid remain available for acceptance for a prescribed period in order to be considered for award is a material requirement and that the failure to meet such a requirement renders a bid nonresponsive. Miles Metal Corporation, 54 Comp. Gen. 750 (1975), 75-1 CPD 145. To hold otherwise would afford the bidder who has limited its bid acceptance period an advantage over its competitors, in that the bidder would have an option to refuse award after that time in the event of unanticipated cost increases, or by extending its acceptance period, to accept an award if desired.

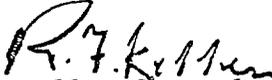
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Bidders complying with the invitation's acceptance period limitation would not have that option but would be bound by the Government's acceptance. Schreck Industries, Inc.; Potomac Industrial Trucks, Inc., B-183849, October 9, 1975.

In the present case, the cover sheet of the solicitation has a section entitled "Information to Offerors" wherein it states "offeror 'fill-ins' are provided on the face and reverse of Standard Form 33 or other solicitation document and Section B of Table of Contents in this solicitation and should be examined for applicability." This should have placed Cam on notice that perhaps the above-quoted provision from page B-2 of Standard Form 33 might not be applicable to this procurement, especially since the words "See Page C-8" were typed in parenthesis after the provision. Since bidders were directed to see page C-8 and the provision on page C-8 specifically prohibited a bid acceptance period of less than 60 days, it is clear that the latter provision was applicable rather than the provision on page B-2. Furthermore, the solicitation specifically provided in paragraph 3 of the Solicitation Instructions and Conditions that any explanation desired regarding the meaning or interpretation of the solicitation should be submitted in writing to the agency. Therefore, any question Cam had as to these provisions should have been submitted to the contracting officer. This being the case, Cam's bid acceptance period did not meet the solicitation requirement for a minimum 60-day acceptance period and, therefore, its bid was nonresponsive.

Regarding Cam's contention that it should be allowed, under ASPR § 2-406.3, to correct the mistake in its bid, the rules under which corrections of mistakes in bid are permitted under ASPR § 2-406.3 are applicable only when the bid as submitted is responsive to the terms of the invitation, which was not the case with Cam's bid. See 40 Comp. Gen. 432 (1961). Under the circumstances, the contracting officer's refusal to permit correction and rejection of Cam's bid as nonresponsive was proper.

For the above reasons, Cam's protest is denied.

  
Deputy Comptroller General  
of the United States