

DECISION

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

FILE: B-208111.2

DATE: October 8, 1982

MATTER OF: Solenergy Corporation

DIGEST:

1. Where, in lieu of a price for certain testing, the bid states that "[a]s similar constructed modules have been tested * * * we have included no cost for [such testing]," the bid can reasonably be interpreted to mean that the bidder did not intend to perform the required testing, rendering the bid nonresponsive. Thus, at best, the bid was ambiguous and was properly rejected by the procuring agency since under one interpretation the bid was nonresponsive.
2. A nonresponsive bid cannot be made responsive after bid opening through change or explanation of what was intended.

Solenergy Corporation protests against the rejection of its bid submitted in response to invitation for bids (IFB) No. DTG23-82-R-20019 issued by the Coast Guard for photovoltaic modules. The Coast Guard declared Solenergy's bid nonresponsive because Solenergy's bid contained a note relating to items 5 and 6 which the Coast Guard concluded was unclear regarding whether Solenergy would perform required testing at no cost or whether Solenergy intended to perform the required testing. Solenergy contends that it meant to perform the testing at no cost. We deny the protest.

The IFB provided that for a bid to be considered responsive, it must contain a firm quote on all items, which were numbered 1 through 7c. The IFB stated that the Government intended to make award for items 1 through 7c at the time of award of the basic contract; however, the Government may elect to perform first article tests outlined in items 5 and 6 rather than have the contractor perform the tests. Item 5 identified a first article test and item 6 required a report on the test performed under item 5.

Solenergy's bid provided prices or the words "no charge" for all items except for items 5 and 6, where Solenergy's bid stated see note. The note provided that "[a]s similar constructed modules have been tested * * * we have included no cost for [such testing]. These results are described in Appendix C."

The Coast Guard determined that the note in Solenergy's bid was unclear whether Solenergy was bidding to perform the work at no cost or whether Solenergy was indicating that it did not intend to perform the work. Since the Coast Guard decided that the contractor should perform the tests, the Coast Guard concluded that a material element of Solenergy's bid was reasonably susceptible to two interpretations, one responsive and the other nonresponsive; thus, the Coast Guard concluded that Solenergy's bid must be rejected as ambiguous and Solenergy could not explain its intent after bid opening.

Solenergy explains, in correspondence filed with our Office, that Solenergy intended to perform the tests (and provide the report) at no cost if, after reviewing the prior test report, the Coast Guard determined that the contractor should perform the tests. Solenergy notes that if the Government exercised its option to perform the tests, the bid prices for items 5 and 6 would be irrelevant. Further, Solenergy states that if the Coast Guard knew prior to bid opening that in fact the contractor would be required to perform the tests, the Coast Guard should have amended the IFB to delete the Government's option to perform the tests; such an amendment, in Solenergy's view, would have eliminated the problem-causing note which Solenergy entered in its bid. Finally, Solenergy contends that the Coast Guard should have sought clarification from Solenergy regarding the intended meaning of the note before the Coast Guard rejected Solenergy's lower priced bid.

To be considered responsive, a bid must be an offer to perform, without exception, the exact thing called for in the invitation, such that an acceptance will bind the contractor to perform in accordance with the terms and conditions in the invitation. Further, a bidder's intent to comply with a solicitation must be discernible from the face of the bid at the time of bid opening; otherwise, the bid cannot be considered as an offer to provide the exact thing required. See, e.g., Photowatt International, Inc., B-208111, July 26, 1982, 82-2 CPD 79. Where a bid is

subject to two reasonable interpretations, under one of which it is nonresponsive, the bid should be considered nonresponsive and the bid must be rejected. See, e.g., Data-Chron, Inc., B-196801, July 29, 1980, 80-2 CPD 78.

For example, in Franklin Instrument Co, Inc., B-204311, February 8, 1982, 82-1 CPD 105, the protester noted in its bid that the quality and configuration of certain items to be furnished would be the same as those furnished under a prior contract. The agency rejected the bid as nonresponsive because the items furnished under the prior contract were materially different from the items covered by the protester's current bid. We held that the bid was properly rejected because, at best, the protester's bid was ambiguous (subject to two reasonable interpretations), one of which made the bid nonresponsive.

Similarly, in Pepsi-Cola Bottling Company of Salina, Inc.--Reconsideration, B-203680.2, March 4, 1982, 82-1 CPD 193, the solicitation called for a price on grape beverage, class 7, and no substitutions were permitted, but the low bidder crossed out grape and wrote in root beer; however, the class 7 reference, which designates grape soda, was not changed. We concluded that it was not clear whether root beer or grape was offered. Under those circumstances, the bid was, at best, ambiguous and properly rejected, because under one reasonable interpretation the bid was nonresponsive.

Here, at best, Solenergy's bid is subject to two reasonable interpretations, one of which is that Solenergy did not include a price for items 5 and 6 because Solenergy did not intend to perform the work covered by those items since Solenergy believed that prior testing on similar modules would satisfy the requirements. Since this interpretation would render Solenergy's bid nonresponsive, Solenergy's bid is ambiguous and was properly rejected by the Coast Guard. See 52 Comp. Gen. 886 (1973) (bid was properly rejected because bidder failed to insert a price or unambiguously state that required testing would be performed at no charge).

Further, in our view, the Coast Guard was not obligated to amend the IFB to advise bidders that prior to bid opening, the Coast Guard decided to have the contractor perform the tests. The language of the IFB was not the reason that Solenergy's bid was declared nonresponsive; Solenergy's note caused the problem that resulted in the proper nonresponsiveness determination.

Finally, contrary to Solenergy's contention, the Coast Guard could not have permitted Solenergy, after bid opening, to eliminate the ambiguity caused by the note in Solenergy's bid. It is a fundamental principle of Government procurement that a nonresponsive bid cannot be made responsive after bid opening through change or explanation of what was intended. See, e.g., Dancom Janitorial Service, Inc., B-206353, April 19, 1982, 82-1 CPD 356.

Accordingly, the protest is denied.

for *F. H. Barclay, Jr.*
Comptroller General
of the United States