



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Municipal Leasing Systems, Inc.

**File:** B-242648.2

**Date:** May 21, 1991

David Kemmler for the protester,  
Paul M. Fisher, Esq., Department of the Navy, for the agency,  
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

## DIGEST

1. Bid under solicitation for lease with option to purchase motor vehicles was properly rejected as nonresponsive where agency reasonably concluded that the language the bidder inserted in its bid regarding percentage of lease price to be applied to purchase price limited the agency's right to exercise the purchase option during the first 12 months of the contract, and made the bid ambiguous regarding the actual price that the agency would be obligated to pay if it exercised the purchase option.
2. Protester is not an interested party to challenge agency's cancellation of solicitation where protester's bid was properly rejected as nonresponsive.

## DECISION

Municipal Leasing Systems, Inc. protests that the Department of the Navy improperly canceled invitation for bids (IFB) No. N62467-90-B-0851.

We deny the protest in part and dismiss it in part.

The IFB was issued on November 8, 1990, for the lease with option to purchase of various motor vehicles. Bidders were required to bid the monthly lease price, the purchase price, the percentage of the lease price to be applied to the purchase price, and the price for excess mileage. The contract was to be effective for a period of 12 months with the Navy retaining the option to extend the term of the contract for an additional 12 months. The contract was to be awarded to the lowest responsive, responsible bidder with the

lowest bidder determined pursuant to a formula that was set out in the IFB.

Five bidders responded to the solicitation with Municipal submitting the low bid. After reviewing Municipal's bid, the contracting officer determined that the bid was unbalanced. The Navy also determined that Municipal's bid was nonresponsive because in the space for the percentage of the lease price to be applied to the purchase price, Municipal entered "92.5 [percent] after 12 months" for the compact sedans, and "92 [percent] after 12 months" for the remaining types of vehicles called for by the IFB; in the Navy's view, this language precluded it from exercising the purchase option during the first 12 months of the lease. As a result, Municipal's bid was rejected as nonresponsive. Subsequently, the Navy canceled the IFB after determining that the bidding schedule and evaluation criteria were defective and resulted in unreasonable bid prices.

Municipal protests that the solicitation was not defective and that its bid was improperly rejected as nonresponsive. Municipal therefore argues that the Navy did not have a proper basis to cancel the solicitation and should reinstate the IFB and award the contract to Municipal.

Concerning the responsiveness of its bid, Municipal argues that the statement in its bid regarding the percentage of the lease price to be applied to the purchase--"92.5 [percent] [or 92 percent] after 12 months"--was not intended to preclude the Navy from exercising the option to purchase during the first 12 months of the contract. Rather, asserts Municipal, it included the statement because the evaluation formula in the IFB stated that for the purposes of evaluation the Navy would assume that it would purchase the vehicles at the end of 12 months. The protester further explains that if the Navy were to exercise the purchase option prior to end of the 12 months, it would calculate the purchase option value based upon the formula that was implicit in its lease calculation. Finally, Municipal argues that this is a minor matter that the contracting officer could have clarified with Municipal under Federal Acquisition Regulation (FAR) § 14.405 without rejecting the firm's bid.

A bid is responsive only if the bidder has unequivocally offered to provide the requested items or services in total conformance with the requirements specified in the IFB. Power Ten, Inc., B-236725, Nov. 18, 1989, 89-2 CPD ¶ 563. A bid must be rejected if it attempts to impose conditions that

modify material requirements of the IFB or limit the bidder's liability to the government. Gelco Payment Sys., Inc., B-234957, July 10, 1989, 89-2 CPD ¶ 27. A bid also must be rejected as nonresponsive if it is ambiguous regarding the actual price the government would be obligated to pay upon acceptance of the bid. WN Hunter & Assocs., B-237168, Nov. 3, 1989, 89-2 CPD ¶ 424.

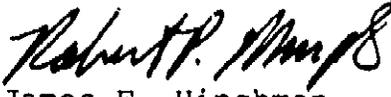
Here, while Municipal argues that the statement in its bid regarding the percentage of the lease price to be applied to the purchase option was not intended to restrict the Navy's right to exercise the purchase option during the first 12 months of the contract, there is nothing in Municipal's bid to indicate that the Navy would be permitted to exercise the option during the first 12 contract months. On the contrary, the language in Municipal's bid--"after 12 months"--clearly would seem to limit the Navy's right to exercise the purchase option to after 12 months have passed. At the very least, the Navy's interpretation is a reasonable one. Since, as reasonably interpreted by the Navy, the bid does not unequivocally offer to meet the requirements of the IFB, the Navy properly concluded that it was nonresponsive. Power Ten, Inc., B-236725, supra.

Moreover, even assuming that the bid reasonably could be interpreted as Municipal suggests, as not limiting the Navy's right to purchase during the first 12 months, the bid does not indicate what percentage of the lease price will be applied to the purchase price if the Navy exercises the purchase option. While the bid specifies "92.5 [percent] [or 92 percent] after 12 months," it does not state that these or any other percentages would be the amount of the lease price applied to the purchase price if the purchase option was exercised during the first 12 months. Since the bid does not clearly spell out the actual price the Navy would be obligated to pay if it exercised the purchase option, the bid was nonresponsive on this ground as well. WN Hunter & Assocs., B-237168, supra.

To the extent Municipal argues that after bid opening it should have been given the opportunity to clarify the statement in its bid as a minor informality or irregularity, a minor informality or irregularity is one that is merely a matter of form and not of substance. FAR § 14.405. Here, as noted above, the defect in Municipal's bid goes to the substance of the government's rights under the contract--the right to exercise an option at any time; thus, it is not merely a matter of form. Accordingly, the general rule that a bid that is nonresponsive may not be corrected by post-bid opening explanations applies, and the bid may not be revised. General Welding, Inc., B-236819, Dec. 8, 1989, 89-2 CPD ¶ 532.

Since Municipal's bid was properly rejected as nonresponsive, Municipal would not be eligible to receive award under the solicitation even if we were to sustain its protest against the cancellation of the IFB. A party is not interested to maintain a protest if it would not be in line for award if its protest were sustained. Consequently, Municipal is not an interested party to protest the cancellation of the IFB. Titan Roofing, Inc., B-236236.2, Jan. 10, 1990, 90-1 CPD ¶ 39.

The protest is denied in part and dismissed in part.

  
for James F. Hinchman  
General Counsel