

DECISION



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

60636

FILE: B-185469

DATE: March 18, 1976

MATTER OF: Simmonds Precision

98469

DIGEST:

1. Rejection of bid is proper where bid as submitted is at best ambiguous as to whether it complies with required delivery schedule since it is subject to two reasonable interpretations (under one of which it would be responsive and under the other nonresponsive) and must be considered nonresponsive.
2. While bidder contends response to delivery requirement was intended to comply, intention to comply (responsiveness) must be clear on face of bid itself at time of bid opening or bid is properly for rejection.

Simmonds Precision (Simmonds) protests against the rejection of its bid by the Department of the Air Force, Oklahoma City Logistics Center. Simmonds' bid was determined to be nonresponsive as it did not meet the delivery requirements of the solicitation.

The solicitation required delivery of 440 transmitters in three lots. The first 146 transmitters had to be delivered 150 days after receipt of the order (ARO), another 146 transmitters 180 days ARO and completion of delivery 210 days ARO. The invitation for bids (IFB) also permitted accelerated delivery schedules as long as each increment and complete delivery complied with the delivery requirements. The solicitation also provided that offering delivery "under such terms and conditions that delivery will not clearly fall within the applicable delivery period specified" will result in a determination that the bid is nonresponsive.

In response to the solicitation, Simmonds submitted the following:

" QUANTITY TIME
(Within the number of days stated below after receipt of contract.)

To your requirement - 22 weeks ARO"

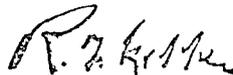
B-185469

The contracting officer interpreted Simmonds' bid as proposing delivery of the entire lot (440 transmitters) 22 weeks ARO. Therefore, he concluded that the proposed delivery schedule of 22 weeks ARO exceeded the initial required delivery of 146 units 150 days ARO by 4 days. While the solicitation authorized accelerated delivery schedules for any increment or the total quantity, delivery had to be made within the required schedules under the terms of paragraph H-1(G) of the solicitation. The Simmonds' bid was therefore rejected as nonresponsive for failing to conform with the required delivery schedule.

Simmonds, on the other hand, contends the offered delivery schedule "To your requirement--22 weeks ARO" is responsive to the required delivery schedule. Simmonds asserts that the phrase--"To your requirement"--offered delivery of the first 146 transmitters 150 days ARO, and that the final phrase offered completion of the entire contract 22 weeks ARO.

From a review of the record before this Office, we think Simmonds' bid, at best, created an ambiguity as to what delivery schedule was being offered. Where a bid is subject to two reasonable interpretations, under one of which it would be responsive, and under the other nonresponsive, we have consistently considered the bid nonresponsive. 53 Comp. Gen. 34; id. 320 (1973); B-177258, February 7, 1973. While Simmonds may have intended to deliver the first lot 150 days ARO and complete the contract 22 weeks ARO, a bidder's intention must be determined from the bid itself at the time of bid opening. Abbott Laboratories, B-183799, September 23, 1975, 75-2 CPD 171, and cases cited in text; D. Moody & Co., Inc.; Astronautics Corporation of America, 55 Comp. Gen. 1, 75-2 CPD 1, and cases cited in text. As Simmonds' bid did not clearly assure the Government of the required delivery schedule, the bid was properly rejected as nonresponsive. Armed Services Procurement Regulation § 2-404.2(c) (1975).

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States