

DECISION



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

26672

FILE: B-212535

DATE: October 31, 1983

MATTER OF: Railway Specialties Corporation

DIGEST:

1. A bid offering a delivery schedule of "Dely. 240 days ARO," i.e., offering delivery within 240 days after receipt of notice of award, is nonresponsive to a required delivery schedule of within 240 days after date of contract.
2. Where a bid offers two conflicting delivery schedules, one of which is nonresponsive to the required delivery schedule, the bid is ambiguous and properly is rejected as nonresponsive.
3. Where a bid offers a delivery schedule deviating from the required delivery schedule, the deviation cannot be treated as a minor informality since delivery items represent material requirements.
4. Where a bid offers a delivery schedule deviating from the required delivery schedule and therefore renders the bid nonresponsive, the deviation cannot be corrected under the rules governing mistakes in bids since errors in bids which may be corrected after bid opening are those which do not affect the responsiveness of a bid.
5. A nonresponsive bid may not be accepted even though it would result in monetary savings to the government since acceptance would be contrary to the maintenance of the competitive bidding system.

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Railway Specialties Corporation protests the rejection of its bid by the Defense Industrial Supply Center (DISC), Defense Logistics Agency (DLA), as nonresponsive to invitation for bids (IFB) No. DLA 500-83-B-0844. DLA rejected the bid because it allegedly failed to comply with the required delivery schedule set forth in the solicitation. We deny the protest.

The solicitation required delivery f.o.b. destination of 2,465 dog assemblies, with a desired delivery schedule of within 180 days after date of contract and a required delivery schedule of within 240 days after date of contract, as specified in the "Time of Delivery" clause of the IFB. Bidders were offered the opportunity by that clause to propose a different delivery schedule, but were warned that:

"Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable REQUIRED delivery period specified above will be considered nonresponsive and will be rejected."

The solicitation incorporated by reference Clause C-14 of the DISC Master Solicitation DISC Form 2000F, February 1983 (as set forth in Defense Acquisition Regulation 7-104.92(c)), which provides in subsection (b) that:

"Attention is directed to Clause D-8 which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Any award hereunder, or a preliminary notice thereof, will be mailed or otherwise furnished to the bidder the day the award is dated. Therefore, in computing the time available for performance, the bidder should take into consideration the time required for the notice of award to arrive through the ordinary mails. However, a bid offering delivery based on date of receipt by the Contractor of the contract or notice

of award (rather than the contract date) will be evaluated by adding five days for delivery of the award through the ordinary mails. If, as so computed, the delivery date offered is later than the delivery date required in the invitation, the bid will be considered nonresponsive and rejected."

DLA received 16 bids in response to the solicitation, including an apparent low bid of \$78,880 from M.V.I. Precision Machining Ltd., a bid of \$113,048.32 from Railway Specialties and a bid of \$117,110.25 from Juniper Industries, Inc. After M.V.I. was allowed to withdraw its bid on the basis of a mistake in bid claim, Railway Specialties' bid appeared low.

The contracting officer, however, upon further examination of Railway Specialties' bid, determined it to be nonresponsive to the required delivery schedule. Although Railway Specialties had typed in "240 days" under the heading "Within No. of Days After Date of Contract" in the section of the delivery schedule provided for bidders to propose a delivery schedule, it had also typed in "Dely. 240 days ARO" under the price it indicated in the pricing schedule. The contracting officer read "ARO" to mean "after receipt of notice of award" and, applying paragraph (b) of Clause C-14 above, determined that the time of delivery contained in the pricing schedule was within 245 days. The contracting officer found Railway Specialties' bid to contain two conflicting delivery schedules, the first of which in the "Time of Delivery" clause for 240 days rendered the bid responsive to the government's requirements and the second of which in the pricing schedule for 245 days rendered the bid nonresponsive. He therefore determined the bid to be ambiguous and accordingly rejected it as nonresponsive. Upon learning of the contracting officer's actions, Railway Specialties filed this protest with our Office.

Railway Specialties contends that the agency acted arbitrarily and capriciously in relying upon an allegedly irrelevant and inapplicable statement in the pricing

schedule to justify rejection of its bid instead of giving precedence to the specific, responsive delivery schedule offered in the "Time of Delivery" clause. Railway Specialties further alleges that the "Dely. 240 days ARO" statement was inadvertently and erroneously added and constituted a mere minor informality that the agency could have waived. Railway Specialties argues that the agency's allegedly "hyper - technical" approach will result in the unnecessary expenditure of substantial tax funds.

Railway Specialties has not disputed the agency's interpretation of "ARO" as signifying "after receipt of order," which in turn is viewed in these circumstances as equivalent to "after receipt of notice of award or contract." We have previously adopted a similar interpretation of "ARO." See Korad, a Division of Hadron, Inc., B-186879, July 29, 1976, 76-2 CPD 100; SRM Manufacturing Company, B-173956, November 24, 1971. See also Imperial Eastman Corporation, 55 Comp. Gen. 605 (1975), 75-2 CPD 417 (interpretation of "after receipt of award"). Accordingly, as required by Clause C-14, the contracting officer properly evaluated the "Dely. 240 days ARO" delivery schedule offered by Railway Specialties in the pricing schedule clause as offering delivery only within 245 days from the date of contract, the 240 days specified plus the 5 days for delivery through the ordinary mails, and thus as nonresponsive to the required delivery schedule of within 240 days from the date of contract.

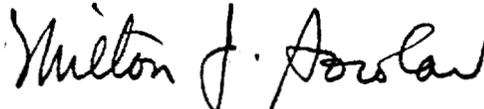
DLA's rejection of Railway Specialties' bid therefore was proper. Where a bid is subject to two reasonable interpretations, under one of which it is nonresponsive, the bid is ambiguous and must be rejected. See Union Metal Manufacturing Company, Electroline Division, B-209161, November 2, 1982, 82-2 CPD 402; Pepsi-Cola Bottling Company of Salina, Inc. - Reconsideration, B-203680.2, March 4, 1982, 82-1 CPD 193. The presence of conflicting delivery schedules, one of which is nonresponsive, as is the case here, has been considered to render a bid ambiguous even though the delivery schedule inserted by the bidder in the appropriate place designated

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by the IFB for indicating a delivery schedule was responsive. See Key Power Systems, Inc., B-187614, November 9, 1976, 76-2 CPD 397; Midwestern Instruments, Inc., 43 Comp. Gen. 813 (1964).

A deviation such as this from the required delivery schedule cannot be waived as a minor informality since delivery terms represent material requirements. Nor may Railway Specialties' bid be corrected under rules governing mistakes in bid since errors in bids which may be corrected after opening are those which do not affect the responsiveness of the bid. Further, a nonresponsive bid may not be accepted even though it would result in monetary savings to the government since acceptance would be contrary to the maintenance of the integrity of the competitive bidding system. See Made-Rite Tool Company, Inc., B-206610, June 17, 1982, 82-1 CPD 600.

The protest is denied.

for 
Comptroller General
of the United States