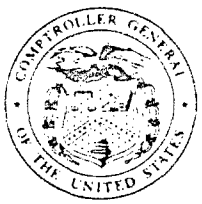
Proc. II

DECISION



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

10,440

FILE: B-194818 DATE: June 13, 1979

MATTER OF: Schreck Industries, Inc. CNG 00724
[Protest of Bid Rejection as Nonresponsive]

DIGEST:

1. Protest is dismissed where protester's initial submission demonstrates affirmatively that protest is untimely.

2. Protest concerning rejection of bid which is not filed within 10 working days after receipt of letter from procuring activity setting forth reason for rejection is untimely under GAO Bid Protest Procedures and not for consideration on merits.

3. Delay in submitting protest attributed to obtaining copies of GAO decisions cited in agency's rejection of bid as illustrative of rule that ambiguous bid must be rejected is not delay for "good cause" under GAO Bid Protest Procedures. Review of GAO decisions was not essential to permit protester to object to agency's position that pencilled insertion in bid caused an ambiguity as to whether bidder intended to conform to specification.

Schreck Industries, Inc. (Schreck) protests the rejection of its bid and the award of a contract to the Raymond Corporation for one Truck, Fork, Reaching, Tiering, by the U.S. Army Corps of Engineers, Huntsville, Alabama (Army) as a result of invitation for bids (IFB) DACA87-79-B-0130.

CNG 00723

ACG 00561

By letter received April 16, 1979, the Army advised Schreck that its bid was rejected as nonresponsive under the provisions of Defense Acquisition Regulation (DAR) 2-404.2(d)(v) because:

~~00557~~

> "The number 83-130 was entered under paragraph 3.1(b) on page 1, Section F of your bid on the referenced IFB. This number was not explained and, therefore, created an ambiguity in your bid in that it was not clear whether you are offering to supply the required item in complete conformance with the specification, or merely a similar item which may or may not conform to the specifications."

The letter also cited four decisions of this Office as illustrative of cases in which the contracting officer properly rejected ambiguous bids.

In its protest, received by this Office on May 9, 1979, Schreck states that:

> " * * * [W]e disagree with the Contracting Officer's contention for the following reasons:
>
> (1) The entry '83-130' was in pencil, wherein the remainder of our bid submission was typewritten.
>
> (2) The entry '83-130' was made adjacent to the Ordering Data, para. (b), which states the size of the mast required and was made as a note for easy referral during pricing by the salesman and in no way can be construed as qualifying the bid when the size mast required by size 2 of the specification is 85-130. It is a common practice to indicate the collapsed mast height and lift height as two numbers separated by a dash, i.e. 83-130 means 83" collapsed mast height, 130" lift height.
>
> "It is our contention that this pencil insertion was a 'mistake in bid' for the simple

> fact that this pencil notation was not intended to be in our bid because it was not typewritten as the rest of our bid was. The pencil notation should have been erased and the fact that it was overlooked during proof reading is a simple clerical error.
>
> "None of the cases cited in subject letter are related to this case in any way because every notation made in those bids was intended to be there by the bidder and every notation could be related to a specific part number or piece offered."

Schreck has orally advised us that after receipt of the Army letter, it contacted this Office by telephone on April 16, 1979, and requested copies of our decisions cited by the Army. These were received on May 4, 1979.

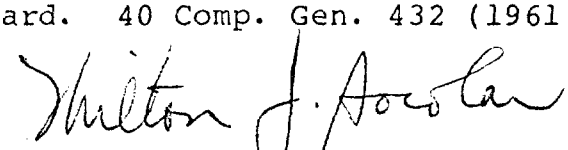
This case is dismissed on the basis of the protester's initial submission and without further development pursuant to our protest procedures because the document submitted and read in the light most favorable to the protester affirmatively demonstrates that the protest is untimely. Murphy Anderson Visual Concepts--Reconsideration, B-191850, July 31, 1978, 78-2 CPD 79.

Our Bid Protest Procedures (4 C.F.R. Part 20 (1978)) provide that a protest, to be timely, must be received by our Office not later than 10 working days after the basis for the protest is known or should have been known, whichever is earlier. 4 C.F.R. 20.2(b)(2). We believe that when Schreck received the Army letter on April 16, 1979, it knew the basis for its protest as the letter advised its bid was rejected because it was considered ambiguous. Schreck did not need our decisions to argue, as it has, that the pencilled insertions in its bid were the result of a mistake and were not intended as qualifying its bid. Moreover, our decisions were cited as precedent for the rule that an ambiguous bid must be rejected and the protester merely argues that application of that rule is unjustified on the facts of this case.

Obviously, it was not necessary for the protester to obtain copies of our decisions to state that position.

Moreover, our Office provides copies of specific decisions as time and resources permit; however, any delay in receiving copies of our decisions was at the protester's risk. Otherwise, the purpose of the 10-day rule, to allow potential protesters a reasonable opportunity to determine if they desire to protest, would be subverted. Thus, we find Schreck's protest is untimely under our Bid Protest Procedures as it was not filed within 10 working days after the basis of its protest was known, 4 C.F.R. 20.2 (b)(2); Weather Measure Corporation, B-194230, April 10, 1979, 79-1 CPD 251; Bauer Ordnance Company, B-193308, December 28, 1978, 78-2 CPD 441, and we do not find any "good cause" for the untimely submission or any significant issue raised by the protest. See 4 C.F.R. 20.2(c). Consequently, the protest is dismissed.

For the information of the protester, we point out that, generally, the rules covering correction of mistakes concern mistakes in bid prices and may not be used to correct an error that makes the bid nonresponsive and ineligible for award. 40 Comp. Gen. 432 (1961).



Milton J. Socolar
General Counsel