

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

FILE NO. B-186385

DATE: August 3, 1976

MATTER OF: Parker-Hannifin Corporation

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DIGEST:

1. Where IFB required delivery within 210 days "after date of contract," bid offering delivery 210 days "ARO or better" was nonresponsive since "ARO" qualification had effect of extending promised delivery beyond that required by solicitation and therefore was a material deviation.
2. Oral explanations given by bidder before bid opening may not be considered in determining bid responsiveness since intention of bidder must be manifest within "four-corners" of bid documents. Also, erroneous oral instruction by Government representative prior to bid opening is not binding on Government.

Parker-Hannifin Corporation protests the award of a contract to Delevan Manufacturing Co., under IFB No. DAAJ01-76-B-0361 issued by the Army Aviation Systems Command. Parker's bid was low but it was rejected as nonresponsive to the delivery requirement of the IFB.

The solicitation required that 5,000 units be delivered within 210 days after date of contract and that an additional 6,000 units be delivered within 240 days after date of contract. Accelerated delivery was acceptable to the Government. Parker offered to deliver the required quantities within "210 days ARO or better" and within "240 days ARO or better," respectively. The Government construed "ARO" to mean after receipt of order and rejected the bid as exceeding its specified delivery requirements.

The protester contends that its sole reason for using the term "ARO or better" was to state its intention to better the required delivery. It believes that this intention is consistent with standard commercial usage of that term. In addition, Parker states that a Government representative orally advised prior to bid opening that "ARO or better" was acceptable to the Government. The protester believes that the use of "ARO" should be considered a minor deviation which may be waived pursuant to Armed Services Procurement Regulation (ASPR) 2-405 (1975 ed.).

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The instant solicitation contained Standard Form 33A, Solicitation Instructions and Conditions, which provides in paragraph 10(d) that a written award mailed or otherwise furnished shall be deemed to result in a binding contract. Thus, acceptance or award is effective from the date the award is mailed and not from the time of its receipt by the contractor which, of course, would occur at a later time. 45 Comp. Gen. 700, 708 (1966); 35 Comp. Gen. 272, 274 (1955) and cases cited therein. Moreover, the solicitation advised bidders that any award would be mailed or otherwise furnished to the bidder the day the award is dated and that bidders, in computing the time available for performance, should consider the time required for the notice of award to arrive through the ordinary mails. Bids which offered delivery based on date of the contractor's receipt of notice of award rather than the contract date would be evaluated by adding 5 days to the promised delivery to allow for delivery of the award document through the ordinary mails. The solicitation expressly warned that if, as so computed, the delivery date offered is later than the delivery date required in the invitation, the bid would be rejected as nonresponsive.

Pursuant to ASPR 2-404.2(c)(1975) any bid which fails to conform to the delivery schedule or to permissible alternatives stated in the solicitation, must be rejected as nonresponsive. Moreover, we have held that where the invitation requires delivery within a stated period, time must be regarded as of the essence of the contract even if the solicitation does not expressly so state. 38 Comp. Gen. 876 (1959). Thus, deviations from the specified delivery schedule may not be considered minor deviations which are correctable under ASPR 2-405. Whatever the protester's intention in using the term "ARO or better" may have been, it is clear that the bidder reserved to itself the right to delay delivery until 240 days after receipt of order or award. We are aware of no standard commercial usage which would prevent the bidder from asserting such a right if award were made to it on an "ARO" basis. Moreover, we have consistently required bid rejection where the "ARO" qualification in the bid has the effect of extending the promised delivery beyond that required by the solicitation. 55 Comp. Gen. 605 (1975), 75-2 CPD 417. The fact that prior bids by Parker may have been accepted by the Government notwithstanding its use of similar "ARO" language does not in our opinion require a repetition of such erroneous action. B-173956, November 24, 1971.

Parker also states that it orally explained to a Government representative prior to bidding that the phrase "ARO or better" was intended to convey its intention to better the Government's delivery requirements. Parker contends it was advised orally that use of "ARO or better" was "permissible." However, we have held that the responsiveness of a bid is to be determined by the intention of the

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bidder manifested within the "four-corners" of the bid documents. Acceptance of a bid by a contracting officer on the basis of independent knowledge outside of the bid itself would not operate to create a valid and binding contract. 48 Comp. Gen. 593, 601 (1969). Furthermore, paragraph 3 of Standard Form 33A, Solicitation Instructions and Conditions specifically states that oral explanations or instructions given before bid opening will not be binding.

In view of the foregoing, we must conclude that Parker's bid was properly rejected as nonresponsive to a material provision of the IFB.

Accordingly, the protest is denied.

R. J. Kistner
Deputy Comptroller General
of the United States