

**DECISION**



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

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FILE: B-184904

DATE: December 30, 1975

MATTER OF: Imperial Eastman Corporation

**DIGEST:**

Where IFB required delivery within 280 days "after date of award", telegraphic bid offering delivery "280 days after receipt of award" was properly rejected as nonresponsive, where solicitation contained provision for evaluation of bids offering delivery based upon date of receipt of contract or notice of award (rather than contract date) by adding the maximum number of days normally required for delivery of the award through the mails. Thus evaluated, protester's bid exceeded the required delivery schedule.

Imperial Eastman Corporation (Imperial) has protested the rejection of its low telegraphic bid as nonresponsive, and the subsequent award of a contract to Container Service, Inc. (CSI), the second low bidder, under invitation for bids No. DSA700-75-B-2685, issued by the Defense Supply Agency, Defense Construction Supply Center (DCSC), Columbus, Ohio.

The subject IFB, which called for the supply of tube-pipe fitting kits, required delivery within 280 days "after date of award." Upon the opening of bids on July 30, 1975, it was discovered that Imperial's low telegraphic bid stated, in part, delivery terms of "280 days after receipt of award" /emphasis added/. However, a signed bid form, which was received as a confirming bid after the time set for bid opening, took no exception to the IFB's delivery requirements. The agency advised Imperial that the confirming bid could not be considered in determining the responsiveness of the timely telegraphic bid due to its untimely receipt. The timely telegraphic bid was rejected as nonresponsive pursuant to Armed Services Procurement Regulation (ASPR) § 2-404.2(c)(1974 ed.) which requires rejection of any bid which fails to conform to the delivery schedule.

Counsel for Imperial has contended that the bid was improperly rejected and that the contracting officer failed to follow the procurement regulations applicable to an apparent minor informality, irregularity, or mistake in bid.

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Counsel maintains that notwithstanding the use of the terminology "after receipt of award," it was unmistakably clear from the telegraphic bid that no exceptions were being taken to the terms of the IFB. Reference is made to the telegraphic bid's opening sentence which began:

"Subject to all terms, conditions, and provisions of Solicitation No. DSA700-75-B-2685 \* \* \*"

and the subsequent statement in the telegram:

"\* \* \* delivery as required by the solicitation, with the shipping point being Chicago, Illinois."

Counsel therefore urges that the responsiveness of the bid is clear from a reading of its entirety, citing 51 Comp. Gen. 831, 833 (1972); 49 Comp. Gen. 517, 520 (1970); and 48 Comp. Gen. 593, 601 (1969).

Counsel further argues that weight must be given to the late confirming bid documents in which no exceptions were taken to the delivery provision specifying 280 days after "date of award." It is urged that this should constitute strong evidence as to the content of Imperial's telegraphic bid since the confirming document was sent by certified mail, return receipt requested, on the same date as transmission of the telegraphic bid, so that Imperial had no opportunity to modify that document after the bid opening date.

Counsel's final contention is that the semantical terms "date of award" and "receipt of award" must be considered synonymous in the Government contracting milieu, wherein "receipt" is to be arguably construed to connote that the contractor becomes a recipient of a contract upon its execution, as distinguished from physical receipt of the contract or physical receipt of notice of the fact that the contract has been awarded.

The subject IFB has addressed the matter with considerable specificity. At page 7, with regard to the time of delivery, the IFB expressly made applicable, with the deletion of subparagraph c, the provisions of paragraph HO7 of the DSCS Master Solicitation, and stated:

**"IMPORTANT:** Bidders not meeting Government's REQUIRED delivery schedule set forth above

WILL BE CONSIDERED NONRESPONSIVE.  
Attention is directed to Para (b)  
Prov. H07 set forth in DCSC Master  
Solicitation." (Emphasis in original.)

Paragraph H07, which expressly controls situations such as herein presented, states:

"H07 - TIME OF DELIVERY (IFB's) (1974 APR -  
DCSC:

a. Delivery is Required to be made in accordance with the schedule set forth below. Bids failing to meet the required delivery schedule will be rejected as non-responsive.

CLIN(S)	QUANTITY	TIME (Days after date of award)
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(Government will insert information  
in Solicitation)

b. Attention is directed to paragraph 10d of the Solicitation Instructions and Conditions (SF 33A) 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 the maximum number of days normally required 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." (Emphasis in original.)

This Office has previously considered contract clauses virtually identical to the foregoing, and has rejected the argument that "date of contract" /or award/ and "receipt of contract" /or award/ are synonymous. To the contrary, we have regarded them as separate and distinct dates, holding that the latter is to be construed as the date upon which the award, or notice thereof, is actually received by the successful bidder, and that date is therefore to be determined by the distance between the parties involved and the manner by which either the contract documents or notice of award are transmitted from the Government to the successful bidder. See B-158670, April 14, 1966; B-162138, August 18, 1967; and citations therein. Accordingly, where the maximum number of days required for delivery of the award through the ordinary mails is added to such a proposed delivery schedule, and a delivery schedule so computed exceeds the number of days from date of award as set forth in the solicitation, the bid must be rejected as nonresponsive. B-162138, August 18, 1967. In view of Imperial's location in a state external to that of the procuring activity, it is obvious that the maximum number of days required for receipt of the contract for normal delivery through the ordinary mails would be at least one, and we therefore consider Imperial's bid to have been properly rejected under the provisions of the cited clause.

Although the telegraphic bid contained blanket statements indicating that the protester intended to conform to all the terms and provisions of the subject IFB, the choice of the words "after receipt of award" was most unfortunate since such phraseology, under the provisions of HO7 as interpreted by our Office, required the addition to Imperial's offered delivery schedule of the maximum number of days required for interstate transmission of contract award, thereby rendering the bid nonresponsive.

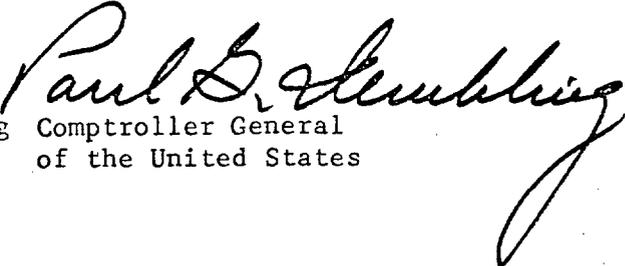
Moreover, and notwithstanding Imperial's stated intent to comply with all terms and provisions of the IFB, the inexplicable deviation from the specific delivery terms of the IFB, construing the matter most favorably to Imperial, may be considered as creating a material ambiguity as to whether or not delivery would be made within 280 days from date of award. In this regard, we have held that where either of two possible meanings can be reached from the terms of a bid, the bidder should not be allowed to explain his meaning when he is in a position thereby to prejudice other bidders or to affect the responsiveness of his bid. See B-154821, September 15, 1964, and citation therein.

In so considering this type of provision, and such deviations therefrom, we have concluded that the latter are not informalities or minor irregularities which may be waived since they go to the substance of the bid by affecting delivery. B-154821, September 15, 1964. Nor may they be eligible for correction under the rules governing mistakes in bids since errors in bids which may be corrected after opening are those which do not affect the responsiveness of a bid. 38 Comp. Gen. 876, 878 (1959).

In 48 Comp. Gen. 593, 601 (1969), cited by counsel for the proposition that bid responsiveness must be determined by a reading in the entirety within the "four-corners" of the bid documents, we noted that a determination of responsiveness on the basis of independent knowledge outside of the bid itself would not create a valid and binding contract. *id.* 601. In view thereof, we must reject the argument that the responsiveness of the timely telegraphic bid may be determined by the content of Imperial's late confirming bid. Inasmuch as the contracting agency had only the telegraphic bid available from Imperial upon which an award could legally be made, its responsiveness must be determined from the content thereof.

Having reviewed the cases cited by Imperial's counsel in support of his contention of bid responsiveness, we find that none involve either the type of deviation or the delivery clause with which we are herein confronted. Therefore, the matter must be governed by the precedents of this Office, set forth above, which specifically address and therefore control, the instant circumstances.

Accordingly, the protest must be denied.

  
Acting Comptroller General  
of the United States