

01489

Paul Sherry
Proc. II



DECISION

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

FILE: P-187591

DATE: January 28, 1977

MATTER OF: Memory Display Systems Division of the EdnaLite Corporation

DIGEST:

1. Bid which stated delivery of first 100 units of total quantity of 271 would be made within 90 days, where IFB required that minimum of 100 units be delivered within 30 days of notice of award, was properly rejected as nonresponsive as material deviation from delivery schedule set forth in IFB notwithstanding that protester's proposed delivery schedule called for delivery of total 271 units in the same period of time as IFB.
2. Protest against alleged restrictiveness of specifications is untimely raised and will not be considered on merits.

Memory Display Systems Division of EdnaLite Corporation (EdnaLite) protests the rejection of its bid as nonresponsive and the subsequent award of a contract to Eastman Kodak Company (Kodak).

Invitation for bids (IFB) No. SSA-IFB-76-0366, issued by the Social Security Administration (SSA) on May 12, 1976, sought bids on 271 microfilm readers and 20 x lens kits. After the rejection of the three lowest bids received, including EdnaLite, as nonresponsive, award was made to the remaining bidder, Kodak.

EdnaLite's bid was rejected as nonresponsive because it took exception to the delivery schedule. The IFB required that a minimum of 100 units be delivered within 30 days following receipt of notice of award. The balance of the 271 units was required to be delivered at the rate of 50 every 30 days until all units were received. EdnaLite's bid proposed supplying 100 units within 90 days to be followed by an additional 100 units 30 days after the first delivery and the final 71 units 30 days after the second delivery. The protester points out that its bid calls for delivery of the total of 271 units in the same period of time as the IFB request.

EdnaLite's bid was properly rejected as nonresponsive. Our Office has held many times that in formal advertising the contract awarded to one bidder must be the contract offered to all bidders and only those deviations which are immaterial and do not go to the substance of the bid so as to prejudice the rights of other bidders may be waived. See, e.g., Edmund Laising Building Contractor, Inc., B-184405, October 29, 1975, 75-2 CPD 263. Federal Procurement Regulations (FPR) § 1-2.404-2(a) and (b) (1964 ed. amend 121) provide that any bid which fails to conform to the essential requirements of the IFB, such as delivery schedule, shall be rejected as nonresponsive and that a bid shall be rejected where a bidder imposes conditions which would modify the IFB. This Office has long acknowledged the materiality of completion schedules and dates and the substantial effect they may have on the competitive position of bidders. See 53 Comp. Gen. 320 (1973); 53 id. 37 (1973); 51 id. 518 (1972).

EdnaLite also asserts that the specifications were unduly restrictive. In this regard, EdnaLite states that upon receipt of the IFB it orally requested the procuring agency to change the magnification, size and weight specifications so as to permit EdnaLite to bid upon its standard Model 1625 reader. When the request was denied, EdnaLite sent the agency a "no quote" letter.

A series of IFB amendments then made several changes to the specifications, including a relaxation of the weight and size limitations, and extended the bid opening date. In view of these changes, EdnaLite "rescinded" its "no quote" letter and advised the agency that EdnaLite was "now in the position of supplying a unit that will fill the needs of the above referenced IFB and we will be submitting a quotation accordingly." EdnaLite timely submitted a bid which took no exception to the product specifications. However, it did modify the delivery schedule, an act which made its bid nonresponsive, as the result of the necessity for making some minor modifications to its standard product.

There is no indication in the record that EdnaLite protested the specifications or the delivery schedule prior to bid opening. When the specification changes initially requested by EdnaLite were not made, it simply indicated it would not bid. EdnaLite's "no quote" letter expressed no desire for corrective action and we do not believe it reasonably can be construed as a protest. When the specifications were relaxed in part, EdnaLite changed its position and submitted a bid. The firm's exception to the delivery schedule was not apparent until bids were opened.

Section 20.2(b)(1) of our bid protest procedures requires that protests bases upon alleged improprieties in an invitation for bids must be filed prior to bid opening. Since EdnaLite's protest was

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not filed with our Office until October 7, 1976, three months after
bid opening, this portion of its protest is dismissed as untimely.

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For the Comptroller General
of the United States