

7073
DECISION



J. Cohen 1/1-1
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON . . . 20548

FILE: B-192128

DATE: July 21, 1978

MATTER OF: Meyers Industries, Inc.

DIGEST:

1. Contracting officer failed to enter at time of award date for delivery of first article test report required by IFB to be within 120 days after award. Such failure did not affect successful bidder's responsiveness, since that is determined from bid as submitted, nor did it otherwise affect validity of award.
2. Protest against awardee's responsibility is dismissed, since with certain exceptions not applicable here, GAO does not review protests against affirmative determinations of responsibility.
3. Whether awardee's performance complies with contract requirements is matter of contract administration and is not for consideration by GAO.

Meyers Industries, Inc. (Meyers), protests the award of a contract to Mancelona Metal Products (MMP) under invitation for bids (IFB) No. DAAEO7-78-B-5363, issued by the United States Army Tank-Automotive Command for hardtop enclosure kits.

Item 0001AB of the IFB concerned first article testing and stated that, unless first article approval was waived, a first article test report was required under IFB section I-09. That section provided that within 120 calendar days from contract award the first article test report shall be forwarded to the administrative contracting officer. Item 0001AB provided a space for the insertion at the time of award of a date for delivery of the first article test report.

The contract as awarded included no such scheduled delivery date. Meyers protests that the expeditious delivery of the first article test report is critical, and that the lack of a scheduled delivery date therefor is a "cardinal omission" rendering MMP's bid "non-responsive." In addition, Meyers contends that MMP is not a responsible firm and will not perform in accordance with the contract's requirements.

Item 0001AB contemplated the entry by the contracting officer of a scheduled delivery date for the first article test report. The "responsiveness" of a bid is determined on the basis of the bidder's submission. Abbott Power Corporation, B-186198, January 7, 1977, 77-1 CPD 13. Accordingly, the lack of the subject entry is not relevant to the responsiveness of MMP's bid.

Moreover, since section I-09 of the IFB required that the test report be furnished the administrative contracting officer within 120 days of award, the entry of a specific date in the space provided in item 0001AB was merely an administrative matter and had no effect on the validity of the contract award. We cannot see how any bidder was prejudiced by the contracting officer's omission.

Concerning MMP's responsibility, our Office does not review protests against affirmative determinations of responsibility unless either fraud on the part of procuring officials is alleged, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. Neither exception is applicable here. Moreover, whether MMP in fact performs in accordance with the requirements of the contract is a matter of contract administration

B-192128

3

and is not for our consideration. Virginia-Maryland Associates, B-191252, March 28, 1978, 78-1 CPD 238.

The protest is denied.

R. F. Kettner
Deputy Comptroller General
of the United States