

DECISION



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

R. F. Anderson
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FILE: B-191780

DATE: October 30, 1978

MATTER OF: Ikard Manufacturing Company

DIGEST:

1. Agency properly rejected protester's bid as nonresponsive, where item offered does not meet stringent test requirements of specification and item bid has not been qualified as required by specification.
2. Protest filed more than 10 days after basis for protest is known is untimely and not for consideration on the merits.

Ikard Manufacturing Company (Ikard) protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) DAAE01-78-S-0237 issued by the Army Missile Materiel Readiness Command (Army) for 23 voltmeters. A prior purchase order issued to Ikard for the same item had been terminated for default; the instant IFB is the reprocurement.

Because Ikard bid less than its initial contract price, its bid could be considered. PRB Uniforms, Inc., 56 Comp. Gen. 976 (1977), 77-2 CPD 213. However, the firm was rejected because it offered to furnish voltmeters it had on hand which were not manufactured by an approved source listed in the specification or items which would be subjected to specified qualification testing.

The IFB required that voltmeters be furnished in accordance with technical specification MIS 17160 (MIS), which listed approved or suggested sources and further provided that qualification testing would be required for additional sources of supply. This specification also incorporated military specification MIL-M-10304 (MIL) which required that products furnished be qualified for inclusion on the applicable qualified products list (QPL) at the time of bid opening.

Ikard's bid contained the notation, "Note: These items are in stock and are available for delivery immediately." After bid opening, the Army performed a preaward survey which initially recommended award to Ikard, based on the fact that Ikard had the required quantity of voltmeters in-house, supplied by A&M Instrument Company (A&M). However, the Army subsequently concluded that Ikard qualified its bid by limiting it to those items already on hand. Therefore, the Army rejected Ikard's bid as nonresponsive because A&M was not an approved or suggested source and the items bid had not undergone qualification testing as provided by MIS 17160.

The Army made an award to Arga Controls, the second low bidder, which is a qualified source in accordance with MIS 17160. Ikard urges that the notation in its bid that the items were on hand was for informational purposes only and presumably was not intended as qualifying its bid to only those items on hand. Moreover, Ikard contends that since military specification MIL-M-10304 "is the controlling or dominating specification from which technical specification MIS 17160 was structured," and the product of its supplier A&M is qualified per MIL-M-10304, the firm was responsive and these items therefore meet the requirements of MIS 17160. Ikard buttresses this argument by noting that MIS 17160 requires qualification inspection in accordance with MIL-M-10304.

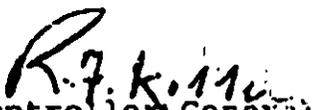
We believe that the notation inserted in Ikard's bid rendered the bid ambiguous because it reasonably may be interpreted as having qualified the bid to only those items which Ikard then had on hand. Although Ikard states that this notation was for the purpose of informing the contracting officer that delivery could be made immediately from items in stock, we have recognized that an indication in a bid that supplies would be furnished from stock can give rise to a legal commitment to furnish only those stock items. See Burley Machinery, Inc., 55 Comp. Gen. 592 (1975), 75-2 CPD 411.

Ikard correctly points out that MIS 17160 requires qualification sampling and inspection in accordance with MIL-M-10304. However, paragraph 4.1.2

of MIS 17160 further requires that "the random drop requirement shall be eliminated and the shock shall be 100 G's and 11 milliseconds." The Army reports that this is a more stringent test than otherwise required and, therefore, a product qualified only to MIL-M-10304 is not acceptable. In our opinion, Ikard's bid was properly rejected as nonresponsive because its supplier's product had not met the more stringent qualification requirements of MIS 17160 even though its supplier was on the qualified products list for MIL-M-10304. See Products Support Incorporated, B-188774, June 24, 1977, 77-1 CPD 455.

Ikard also protests the award of a contract for the same item to Arga Controls under request for proposals (RFP) DAAH01-78-R-0297. Award was made to Arga on March 13, 1978. Therefore, Ikard's protest filed in May is untimely. 4 C.F.R. § 20.2(b)(2) (1978).

The protest is denied.


Deputy Comptroller General
of the United States