

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

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**FILE:** B-210732**DATE:** October 12, 1983**MATTER OF:** Star-Line Enterprises, Inc.**DIGEST:**

1. Where shipping information (vehicle dimensions) included in bid indicates that vehicle offered did not meet specification requirements, bid was properly rejected as nonresponsive.
2. Information in the shipping data clause of a bid which indicates that vehicle offered does not conform with dimensions in the specification constitutes a material deviation and renders bid nonresponsive, because even though it may not affect bid price or shipping cost, it does affect the quality of the product offered.
3. Where protester initially files timely protest and later supplements it with new and independent grounds of protest, the later grounds of protest must independently satisfy timeliness requirements. Such grounds are untimely when they are based on information available from face of the awardee's bid and are filed considerably later than 10 days after bid opening.

Star-Line Enterprises, Inc. protests the rejection of its bid as nonresponsive and the subsequent award of a contract to another firm under invitation for bids (IFB) No. DAAE07-82-B-5745 issued by the U.S. Army Tank-Automotive Command. We deny the protest in part and dismiss it in part.

The solicitation called for ambulances for the Air Force on a multiyear basis. Star-Line's low bid was rejected as nonresponsive because of information the protester provided in the solicitation clause entitled "Guaranteed Maximum Shipping Weights and Dimensions." Star-Line stated in that clause that its vehicles were

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91-3/4 inches wide and 281-7/8 inches long. The solicitation specifications, however, provided that the vehicles must be no less than 95 inches wide and no longer than 274 inches. After Star-Line's bid was rejected as nonresponsive, the contracting agency made award to the second low bidder, Southern Ambulance Builders, Inc.

Star-Line argues that the information regarding the length and width of the ambulances was requested only for computation of transportation costs and was not to be used in determining the responsiveness of its bid. The protester further states that the dimensions it provided in the clause would not materially affect transportation costs or its obligation to comply with the specifications. Star-Line also argues that the transportation data that it supplied, while at variance with the vehicle specifications, could be waived by the contracting officer as a minor informality.

The shipping data clause provided that each bid would be evaluated by adding to the F.O.B. origin price all transportation costs to the destination specified. It further informed bidders that if the supplies delivered exceeded the guaranteed maximum shipping weight or dimensions, the contract price would be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on the bidder's guaranteed maximum shipping weights or dimensions and the transportation costs that should have been used for evaluation purposes based on correct shipping data.

We have recognized, as Star-Line argues, that the purpose of this type of clause is to enable the government to accurately ascertain its total cost for a proposed contract and to establish the basis for a contract price reduction in the event the maximum guaranteed shipping weights or dimensions are exceeded. Further, we have stated that it is proper for bidders to use guaranteed shipping dimensions which are less than the actual dimensions as a permissible alternative to reducing the price for the item itself. Capital Industries, Inc., B-190818, July 7, 1978, 78-2 CPD 17; General Fire Extinguisher Corporation, B-186954, November 15, 1976, 76-2 CPD 413. In such cases, however, there was no evidence that the figures inserted by the bidders in the shipping data clauses deviated from any of the solicitations' specification requirements. See also 49 Comp. Gen. 558 (1970); W. A. Apple Manufacturing, Inc., B-183791, September 23, 1975, 75-2 CPD 170.

To be responsive, a bid as submitted must represent an unequivocal offer to perform the exact thing called for in the solicitation such that acceptance of the bid will bind the contractor to perform in accordance with the solicitation's material terms and conditions. Edward Kocharian & Company, Inc., 58 Comp. Gen. 214 (1979), 79-1 CPD 20. Here, a vehicle conforming to the length and width requirements of the solicitation could not have the shipping dimensions cited in the protester's bid. Although the dimensions were requested in connection with evaluation of shipping costs and not specifically to measure a bidder's intent to meet the specifications, Star-Line's insertion of nonconforming dimensions in the shipping data clause at the very best created an ambiguity concerning whether the vehicle offered would conform to the specification requirements. See Particle Data, Inc., B-209419, February 14, 1983, 83-1 CPD 154. Consequently, we think that the contracting officer properly rejected the protester's bid as nonresponsive because of the information included in the shipping data clause of Star-Line's bid. See B-163181, February 7, 1968, where we upheld an agency's rejection of a bid as nonresponsive because the shipping data included in the bid deviated from the specification requirements.

Star-Line argues that even though its shipping data indicated dimensions different from the specification requirements, any such variation had only a minor effect on the vehicle and on the shipping costs and could have been waived. We disagree.

The agency reports that the ambulance body width requirement was needed to allow sufficient room inside the vehicle to permit medical personnel to work on either side of a patient for the performance of emergency procedures while allowing sufficient interior space for cabinets and cots. Further, the agency indicates that the vehicle length requirement was necessary to ensure vehicle maneuverability. Star-Line has not disputed the agency's position that these dimensions are critical. It merely argues that they make no difference in production costs and thus had no effect on its bid price.

Deviations in a bid which affect quality, quantity or delivery as well as those which affect price go to the substance of the procurement and may not be waived. Ven-Tel, Inc., B-203397, July 1, 1981, 81-2 CPD 3. Star-Line's exceptions to the specified length and width of the vehicle clearly go to the quality of the item sought, and therefore are material and could not be waived. See

Pioneer Industrial Products, B-209131, March 22, 1983, 83-1 CPD 286. Accordingly, the fact that its bid price and shipping costs would not be significantly affected is not relevant.

Star-Line also maintains that acceptance of its bid would result in significant monetary savings to the government. Star-Line's nonresponsive bid, however, would not provide the government with what it needs. Moreover, acceptance of a bid which deviates from the specifications would be unfair to the other bidders, and we have often stated that the importance of maintaining the integrity of the competitive bidding system outweighs the advantage of a monetary savings that would result if a material deficiency is waived or ignored. RAD Oil Company, Inc., B-209047, October 20, 1982, 82-2 CPD 352.

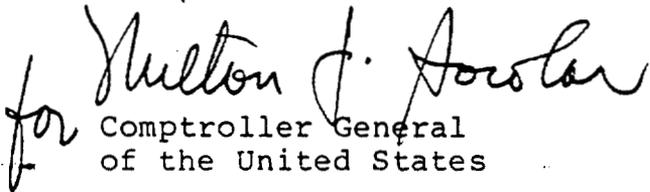
In its response to the agency report, Star-Line argued for the first time that the bid of Southern Ambulance Builders was materially defective because it listed two different weights for the same ambulance in different portions of the shipping data clause. Star-Line stated that since its price was considerably lower than that of the awardee, the awards should not be made for the two subsequent program years and the options for increased quantities not exercised.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1983), require protests of other than solicitation improprieties to be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier. Further, where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later-raised allegations must independently satisfy these timeliness requirements. Gulton Industries, Inc., Engineered Magnetics Division, B-203635, July 20, 1982, 82-2 CPD 59. The record shows that the procuring agency sent Star-Line a notice of award to Southern on January 28, 1983, concurrently with the rejection of Star-Line's bid. Any protest of the award to Southern should have been filed within 10 working days of Star-Line's receipt of this letter. Since the protester's allegations were first filed with our Office on April 5, 1983, they are clearly untimely. See Automated Business Services, Inc., B-207380, June 30, 1982, 82-1 CPD 639.

In any event, the shipping weights in Southern's bid were not (as in Star-Line's bid) inconsistent with any of

the solicitation requirements, because there were no maximum vehicle weights stated in the solicitation. The agency reports that it simply will use the heavier vehicle weights in calculating the shipping costs. Finally, whether the agency will exercise the option for increased quantity at paragraph H17 of the solicitation is a matter of contract administration outside the ambit of our Bid Protest Procedures. Tri State Service Company, B-208567, January 17, 1983, 83-1 CPD 44.

The protest is denied in part and dismissed in part.

*for*   
Comptroller General  
of the United States