

DECISION

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

FILE: B-214121

DATE: April 17, 1984

MATTER OF: Sullair Corporation

DIGEST:

Where bidder includes condition that has the effect of extending the promised delivery date beyond the date required by the solicitation, the bid is nonresponsive and must be rejected.

Sullair Corporation protests the award of a contract to Fray Equipment Company by the U.S. Army Corps of Engineers for a portable air compressor under invitation for bids (IFB) No. DACW67-84-B-0004. The Corps determined that the lower bid of Star Equipment, Sullair's distributor, was nonresponsive because it did not conform to the delivery schedule required in the IFB.

The protest is denied.

The IFB provided that "Delivery is required 30 days after effective date of award." The bid submitted by Star Equipment, however, specified delivery "45 days after date of bid opening." Sullair asserts that Star included this condition because it could not have met the 30-day delivery schedule if the contract had been awarded immediately after bid opening. Since the Corps did not award the contract until 24 days after bid opening, Sullair argues that Star could have met the delivery schedule and, therefore, was responsive.

Because Star, not Sullair, was the bidder under the IFB, Sullair arguably is not an interested party under our Bid Protest Procedures, 4 C.F.R. § 21.1 (1983), to complain about the rejection of Star's bid. See Amacor Industries, Inc., B-210951, April 4, 1983, 83-1 CPD 351. The Corps advises, however, that Star has filed a timely protest with the Corps on the same issue, and the agency requests that our Office resolve the matter. Under these

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circumstances, and since this Office ultimately might have to decide the case, see 4 C.F.R. § 21.2(a) (which provides for an appeal to our Office of adverse contracting agency action on a timely protest at that level), we will consider the protest on the merits.

A bid which takes exception to any of the essential requirements of the solicitation is not responsive and must be rejected. Catalyst Research Corporation, B-207006, April 27, 1982, 82-1 CPD 393. Where, as here, the solicitation requires delivery within a stated period, time must be regarded as of the essence. Instrumentation Marketing Corporation, B-211099, March 29, 1983, 83-1 CPD 324. The inclusion of a qualification in a bid that has the effect of extending the promised delivery date beyond the date required by the solicitation therefore renders the bid nonresponsive. Id.

Sullair intimates that the contracting officer should have contacted either Star or Sullair before the contract was awarded to determine whether the 30-day period could have been met. Responsiveness, however, must be determined from the face of a bid, so that post-bid opening information may not be considered in judging the bid's acceptability. To permit a bidder the opportunity to change, correct or explain a nonresponsive bid after opening would allow the firm to accept or reject the contract after bids have been exposed by correcting or refusing to correct the bid. See Vin Construction Company, Inc., B-206526, June 30, 1982, 82-1 CPD 637.

Finally, Sullair's contention that the contract should have been awarded to Star because the Corp's delay in awarding the contract enabled Star to meet the delivery schedule is without merit. As stated above, responsiveness must be determined from the face of a bid; it cannot depend on the fortuity that the selection process is completed in more or less time than the government had anticipated. See Ames Construction, Inc., B-210578, February 14, 1983, 83-1 CPD 156.

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The contracting officer thus properly determined
Star's bid to be nonresponsive. The protest is denied.

for *Milton J. Fowler*
Comptroller General
of the United States