

DECISION



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

when
28763

FILE: B-214920

DATE: July 11, 1984

MATTER OF: Kaydon Corporation

DIGEST:

1. A bid which on its face offers a delivery schedule which exceeds the required delivery schedule must be rejected as nonresponsive even though the bidder may actually intend to meet all of the requirements in the solicitation.
2. Where a bid offers a delivery schedule exceeding the required delivery schedule and therefore renders the bid nonresponsive, the deviation cannot be corrected under the rules governing mistakes in bids since errors in bids which may be corrected after bid opening are those which do not affect the responsiveness of a bid.
3. A nonresponsive bid may not be accepted even though it would result in monetary savings to the government since acceptance would be contrary to the maintenance of the competitive bidding system.
4. Protest alleging that bearing assemblies were "too complex" to be procured through an invitation for bids concerns an alleged impropriety apparent on the face of the solicitation and thus must be filed prior to bid opening to be timely and to be considered on the merits.

Kaydon Corporation protests the rejection of its low bid as nonresponsive to invitation for bids (IFB) No. N00197-84-B-0023, issued by the Department of the Navy for the procurement of roller bearing assemblies. The Navy rejected the bid because it failed to comply with the required delivery schedule set forth in the solicitation. We deny the protest in part and dismiss it in part.

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The solicitation required delivery within 250 days after the date of contract. It also permitted bidders to propose a different delivery schedule. The solicitation specifically warned bidders, however, that:

"Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable delivery period specified above will be considered nonresponsive and will be rejected."

Although Kaydon submitted the low bid, it proposed to deliver the bearing assemblies within "252 days" after the date of contract. Accordingly, the Navy rejected Kaydon's bid as nonresponsive to the required delivery schedule. Kaydon thereupon filed this protest with our Office.

Kaydon admits entering a delivery schedule of 252 days in its bid but denies that it intended to take exception to the delivery requirement; it maintains that it fully intends to comply with all the requirements of the solicitation. Kaydon states that the "industry standard" is to quote in weeks rather than in days, and that 250 days equates to 36 weeks. Kaydon indicates that it simply mistakenly translated the 36 weeks back into 252 days ($36 \times 7 = 252$).

Kaydon protests the Navy's failure to correct its "obvious mistake" and notes that this will result in award at a higher cost to the government. In addition, Kaydon argues that it was "unfortunate that items of this complexity" were solicited by means of an IFB.

Where an IFB requires delivery within a stated period, time must be regarded as of the essence and a bid which fails to offer delivery within the required time schedule must be rejected as nonresponsive. Instrumentation Marketing Corporation, B-211099, March 29, 1983, 83-1 CPD ¶ 324. A bidder's actual intention of meeting an invitation's material requirements, such as the delivery schedule, cannot render acceptable a bid which on its face modifies the bidder's obligation that would result from

contract award. Ferguson Electric & Plumbing, Inc. and Delta Electric Construction Company, B-213001, Nov. 28, 1983, 83-2 CPD ¶ 620. Such a bid may not be corrected under rules governing mistakes in bid since errors in bids which may be corrected are those which do not affect the responsiveness of a bid. Railway Specialties Corporation, B-212535, Oct. 31, 1983, 83-2 CPD ¶ 519. Further, even where a nonresponsive bid represents a monetary savings to the government, it may not be accepted since acceptance would be contrary to the maintenance of the integrity of the competitive bidding system. Railway Specialties Corporation, B-212535, supra, 83-2 CPD ¶ 519 at 5. We therefore deny Kaydon's protest of the rejection of its bid.

As for Kaydon's allegation that the bearing assemblies were "too complex" to be procured through an IFB, the protest in this regard is untimely and will not be considered because it was not filed until after bid opening. Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1984), require protests based upon alleged improprieties apparent on the face of the solicitation prior to bid opening, such as that alleged here, to be filed prior to bid opening. Spectra-Physics, B-213364, Jan. 3, 1984, 84-1 CPD ¶ 49.

The protest is denied in part and dismissed in part.



Acting Comptroller General
of the United States