

DECISION



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

Shipman  
29265

FILE: B-215076

DATE: September 4, 1984

MATTER OF: Atco Surgical Supports Company

DIGEST:

1. Bid containing 1-1/2-percent interest charge for payments made after 30 days was properly rejected as nonresponsive to solicitation made subject to the Prompt Payment Act, 31 U.S.C. § 3902 (1982), since such condition makes bid, at best, ambiguous as to price.
2. A contracting officer is without authority to make a nonresponsive bid responsive by waiver or deletion of a condition affecting price.

Atco Surgical Supports Company (Atco) protests the award of a contract to Kellogg, Inc. (Kellogg), and the rejection of its bid as nonresponsive for corsets, abdominal binders, and trusses under invitation for bids (IFB) No. 554-13-84, issued by the Veterans Administration (VA) Medical Center, Denver, Colorado.

We deny the protest.

The Atco bid was low but, in the Discount for Prompt Payment clause of the solicitation, Atco included the word "net" in the 30-calendar-day space followed by the phrase "1-1/2% on delinquent balance." The IFB provided that the Prompt Payment Act, 31 U.S.C. § 3902 (1982), would apply to payments under the contract and provided for payment of interest on late payments at the rate determined by the Secretary of the Treasury. The rate set by the Secretary at bid opening was 12-3/8 percent.

Atco contends, first, that the insertion of the 1-1/2-percent interest condition is a nullity, since it is contrary to the provisions of the Prompt Payment Act, supra, and, therefore, should be ignored; second, that the deviation from the terms of the IFB is minor since it may never

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come into effect and, if it did come into effect, it would add only \$8,564.92 to Atco's bid, which is more than \$20,000 less than the next low bid of Kellogg.

In order to be responsive, a bid must contain an unequivocal offer to provide the requested items in total conformance with the material terms of the solicitation, and any bid which does not conform is not responsive and must be rejected. Our Office has defined a material deviation as one which affects the price, quality, or quantity of goods or services offered. RAD Oil Company, Inc., B-209047, Oct. 20, 1982, 82-2 C.P.D. ¶ 352. The late payment interest provision affects price and is, therefore, a material provision. Kari-Vac, Incorporated, B-194202, Jul. 3, 1979, 79-2 C.P.D. ¶ 4; Fire & Technical Equipment Corp., B-192408, Aug. 4, 1978, 78-2 C.P.D. ¶ 91; 50 Comp. Gen. 733 (1971).

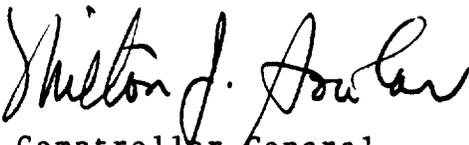
Under the Prompt Payment Act, supra, contractors are entitled to interest on overdue payments. By the terms of the subject solicitation, payments are due on the 30th calendar day after the receipt by the government of a proper invoice or the date supplies are accepted by the government, whichever is later. The interest rate at the time of bid opening, as determined under the act, was 12-3/8 percent. Any deviation from these provisions in a bid would require rejection of that bid as nonresponsive. Here, Atco clearly conditioned its bid on the payment of 1-1/2-percent interest for payments in excess of 30 days. Since it is not possible to determine whether this condition would entitle Atco to more interest than the going rate under the act (it is not stated whether the 1-1/2-percent rate is to be calculated on a daily, monthly or yearly basis), Atco's bid is, at best, ambiguous and must be rejected. Aerol Company, B-195376, Oct. 24, 1979, 79-2 C.P.D. ¶ 287. Furthermore, a contracting officer is without authority to make a nonresponsive bid responsive by waiving or allowing a bidder to delete a condition affecting price. Aerol Company, B-195376, supra.

Atco also contends that since the contracting officer permitted insertion after bid opening of the quantities which could be delivered, which had inadvertently been left blank, he should have allowed correction of the interest rate.

The solicitation contained a clause entitled Qualification of Bidders which required bidders to insert the maximum number of items they could deliver monthly within the required delivery time. This clause clearly

relates to responsibility, that is, the bidder's ability to meet the delivery requirements, not responsiveness. Such information need not be submitted with the bid, even though required by the solicitation, but may be submitted any time prior to award. Elco Elevator Corporation, B-213519; B-213519.2, Feb. 14, 1984, 84-1 C.P.D. ¶ 197. Therefore, the fact that this information was requested and furnished after bid opening provides no basis for allowing the submission after bid opening of information bearing on responsiveness.

We deny the protest.

*for*   
Comptroller General  
of the United States