

DECISION



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

FILE: B-220925

DATE: March 3, 1986

MATTER OF: Rocky Mountain Trading Company

DIGEST:

1. When invitation for bids (IFB) inaccurately stated requirements, the contracting agency should have canceled the IFB and resolicited rather than awarding a contract to the bidder that complied with the actual requirements, but was not low.
2. Offer of version 3.1 of microcomputer operating system is responsive to requirement for version 3.0 or equal when version 3.1 is an upgraded version of the 3.0.
3. Although it was improper to reject bid which satisfied one reasonable interpretation of ambiguous specification on basis it did not comply with agency's interpretation, record provides no basis to conclude that agency's interpretation was not also reasonable. Therefore, GAO cannot find that agency unreasonably excluded protester from competition to award bid preparation costs and costs of pursuing protest.

Rocky Mountain Trading Company (RMTC) protests the Army's rejection of its bid as nonresponsive under invitation for bids (IFB) No. DABT56-85-B-0069 and the award of the contract to the second low bidder. We sustain the protest.

The Army issued this IFB for the acquisition of several microcomputers for Fort Belvoir, Virginia, together with related equipment, devices, software and manuals, on a brand name or equal basis. The relevant items were described as follows:

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Item No.	Description
1	Personal Computer, IBM/PC, 256K, 2DD
4	Memory Quadboard 384 Expansions
15	Software, DOS 3.0

Paragraph C.2.1.2.2 of the IFB stated that "The Central Processing Unit must have a minimum of 348KB of Random Access Memory" (RAM), which is the volatile memory in a computer in which the computer places the programs and data on which it is actively working.

The "IBM/PC" in item No. 1 refers to a personal computer manufactured by the International Business Machines Corporation (IBM). The "K" and "KB" in item No. 1 and the cited paragraph refer to quantities of random access memory, 1K being equal to 1,024 characters. Item No. 4 is an internal expansion board, produced by the Quadram Corporation, with the capability of supporting additional RAM from 0 to 384K in 64K increments, which may be plugged into an IBM PC or compatible microcomputer to enable it to run larger programs or handle more data. DOS refers to the operating system, the program which controls and manages the computer's resources.

RMTC offered the Leading Edge model D computer with 384K of memory (256K plus an added 128K for which RMTC charged \$42) and the capability to expand to 640K. RMTC also offered to provide DOS 2.1, but included a priced option for DOS 3.1. RMTC's total price was \$16,339 if the Army exercised RMTC's option for delivery of DOS 3.1. The awardee, Microtech Systems Corporation (Microtech), offered to provide ZF-158-42 machines manufactured by Zenith Corporation, with 256K RAM in the basic machine and 384K on an expansion board, for a total of 640K, and DOS 3.0. Microtech's total price was \$22,965.

The Army rejected RMTC's bid because it did not offer 640K of RAM and did not specifically provide DOS 3.0. The contract, awarded to Microtech on September 30, 1985, provided for delivery within 30 days of award; absent evidence to the contrary, we presume therefore that the contract is completed. (The record is silent on when RMTC learned of the basis for its protest and the Army has not challenged its timeliness under our Bid Protest Regulations, 4 C.F.R. part 21 (1985). We presume therefore that it is timely. However, because RMTC's protest was not filed within 10 working days of contract award, the Army was not required to suspend performance. See Federal

Acquisition Regulation § 33.104(c)(4), Federal Acquisition Circular 84-9, June 20, 1985.)

The Army points to item No. 4, with its reference to "384 Expansions," in support of its assertion that the IFB required a minimum of 640K RAM (256K in the PC plus 384K on the expansion board). The contracting officer also asserts that RMTC's option for DOS 3.1 did not meet the mandatory requirement for DOS 3.0.

RMTC contends that its bid met the minimum requirements of the IFB and should not have been rejected. In this respect, RMTC contends that its offered system met the minimum memory requirements specified in paragraph C.2.1.2.2 of the IFB, cited above, and asserts that its offered option of DOS 3.1, which RMTC describes as an improved version of DOS 3.0, satisfies the requirement for DOS 3.0. RMTC asserts that the cited paragraph is the only place in the IFB in which a requirement for a specific quantity of RAM is stated.

Notwithstanding the Army's view, we are of the opinion that RMTC's interpretation of the IFB's memory requirement is reasonable. In this respect, we note particularly that the "384 Expansions" requirement in item No. 4 did not state "with 384K installed," or otherwise provide any clear indication that it was anything more than shorthand notation to distinguish the required expansion board from others--with different capabilities and functions--manufactured by the Quadram Corporation. Moreover, as RMTC asserts, paragraph C.2.1.2.2 of the IFB was the only place in which a specific requirement for memory was stated, and this paragraph required that the central processing unit have a minimum of 348K (presumably intended to be 384K) or 128K more than the basic unit's own memory. Thus, paragraph C.2.1.2.2 was inconsistent with the Army's interpretation.

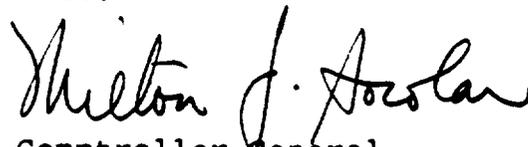
If the Army did intend to require 640K of memory in these microcomputers, it was not accurately expressed in the solicitation, and the proper course would have been to cancel the invitation and to resolicit with a corrected IFB. See Meds Marketing, Inc., B-213352, Mar. 16, 1984, 84-1 CPD ¶ 318.

Regarding the Army's contention that RMTC's offer of DOS 3.1 did not satisfy the "mandatory" requirement for DOS 3.0, we point out that the requirement was for DOS 3.0 or equal. In our view, the distinction between DOS 3.1 and DOS 3.0, on which the contracting officer relies, is

nothing more than a reflection of the common industry practice--of which a knowledgeable purchaser should have been aware--of indicating the introduction of accumulated minor corrections and enhancements to existing software by a minor change in nomenclature, e.g., DOS 3.1 versus DOS 3.0, and identifying the introduction of major enhancements by a major change in nomenclature, e.g., DOS 3.x versus DOS 2.x. DOS 3.1 is essentially a more current release of DOS 3.0, with minor revisions and/or corrections, and for all practical purposes, includes DOS 3.0. In this regard, when queried as to the acceptability of DOS 3.1 or 2.1 as an equal to DOS 3.0, the agency technical representative merely apprised the contracting officer that DOS 2.1 was unacceptable. Other than a conclusory statement from the contracting officer that DOS 3.1 does not meet the mandatory requirement for DOS 3.0, we have no evidence that the contracting officer ever considered the equivalency of DOS 3.1. We further note that the IFB failed to list any salient characteristics of DOS 3.0 with which a bidder offering an equal system must show compliance. Under these circumstances, we think it is unreasonable to reject an offer of DOS 3.1, on the basis that it does not satisfy a requirement for DOS 3.0.

In sum, we find that RMTC's bid reflects a reasonable interpretation of the solicitation, although it differs from the Army's interpretation. We conclude, therefore, that the IFB was, at best, ambiguous. Cf., Conrac Corporation, B-205562, Apr. 5, 1982, 82-1 CPD ¶ 309. Rejection of a bid for failure to satisfy only one interpretation of an ambiguous specification is improper. Syntrex Inc., Managed Information Systems, 63 Comp. Gen. 360 (1984), 84-1 CPD ¶ 522. The Army's rejection of RMTC's bid was therefore improper. Williams & Lane, Inc., B-203233, Jan. 8, 1982, 82-1 CPD ¶ 21.

The protest is sustained. Since we cannot, on the record before us, conclude that the Army's interpretation of the IFB was not also reasonable, we have no basis on which we might find that the Army unreasonably excluded RMTC from the competition. In these circumstances, it would be inappropriate to award RMTC its bid preparation costs or the costs of pursuing its protest. We are, however, by separate letter, bringing this matter to the attention of the Secretary of the Army in the interest of preventing similar improprieties.



Acting Comptroller General
of the United States