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DECISION



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

FILE: B-192408

DATE: August 4, 1978

MATTER OF: Fire & Technical Equipment Corp.

DIGEST:

1. Where protester's initial submission indicates protest is without legal merit, GAO will render decision on matter without requesting report from procuring agency.
2. Determination that bid was nonresponsive because of provision which would impose on Government a 1.5 percent charge per month for past due accounts was proper under DAR § 2-404-2 as condition affected price and could not be deleted or waived as minor informality or irregularity.

Fire & Technical Equipment Corp. (Fire-Tec) protests the rejection of its bid submitted in response to invitation for bids (IFB) No. DAAK01-78-B-1167, issued by the U. S. Army Troop Support and Aviation Materiel Readiness Command (Army), St. Louis, Missouri. Fire-Tec's bid was rejected as nonresponsive because it contained a statement imposing a 1.5 percent charge per month on all accounts 30 days after due date. Fire-Tec contends that this statement was unintentionally stamped on its bid and that it would be in the best interest of the Government to permit its deletion.

In our opinion, this case falls within the ambit of our decisions which hold that where it is clear from the protester's initial submission that the protest is without legal merit, we will decide the matter on the basis of the protester's submission without requesting a report from the procuring agency pursuant to our Bid Protest Procedures, 4 C.F.R. Part 20 (1977). See Western Branch Diesel, Inc., B-190407, December 21, 1977, 77-2 CPD 494 and the cases cited therein.

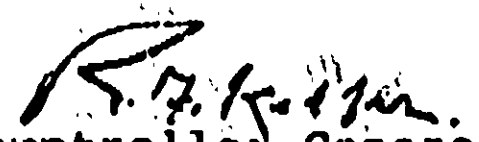
The responsiveness of a bid depends upon whether a bidder has unequivocally offered to provide the requested items in strict conformance with the terms and specifications of the IFB. Litt Power, Inc., B-182604, January 10, 1975, 75-1 CPD 13. Only material available at bid opening may be considered by the contracting officer when determining the responsiveness of the bid. To permit explanations after bid opening to render responsive a bid which is nonresponsive on its face would be tantamount to granting an opportunity to submit a new bid. 52 Comp. Gen. 602 (1973). Thus, a nonresponsive bid may not be corrected and it does not matter whether the failure to comply with the requirements of the IFB was due to inadvertence, mistake or otherwise. 45 Comp. Gen. 434 (1966).

Furthermore, waiver of minor informalities or irregularities in bids is limited to conditions which do not go to the substance, as distinguished from the form, of a bid. A deviation goes to the substance of the bid when it affects price, quantity, quality or delivery of the items offered. Defense Acquisition Regulation § 2-404.2(d). A provision imposing a 1.5 percent charge per month on past due accounts materially affects price. Fisher-Kloslerman, Inc., B-185106, March 9, 1976, 76-1 CPD 165.

We see no merit or relevance in Fire-Tec's contention that a new solicitation will be required if its protest is not sustained because there will remain only one bidder for each line item of the IFB. The necessity for a resolicitation, alone, would not warrant acceptance of a nonresponsive bid or correction to make such bid responsive.

Accordingly, this protest is summarily denied.

Deputy


Comptroller General
of the United States