

# DECISION



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

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FILE: B-183849

DATE: October 9, 1975 97842

MATTER OF: Schreck Industries, Inc.  
Potomac Industrial Trucks, Inc.

## DIGEST:

1. Protest that specifications are unduly restrictive of competition is denied since drafting of specifications to reflect agency's minimum needs is primarily within discretion of contracting agency, and record indicates that determination of agency's minimum technical requirements was not an abuse of such discretion. Fact that particular bidder may be unable to meet solicitation's minimum requirements does not render it unduly restrictive where agency provides factual support, as here, for the requirement.
2. Where IFB stated that bids offering less than a 60-day acceptance period would be rejected as nonresponsive, the rejection of a bid offering 30-day period was proper. Moreover, nonresponsive bid may not be corrected after bid opening since rules permitting correction of mistakes in bids are for application only when the bid as submitted is responsive.

Invitation for bids 14159, 15399, was issued by the United States Government Printing Office (GPO) for the supply of industrial trucks in accordance with the specifications contained therein. Although two protests have been filed under the subject IFB, the GPO awarded a contract on July 15, 1975, to Paul H. Werres Company, Inc., prior to our resolution of the protest, due to an urgent operational requirement for the equipment.

Schreck Industries, Inc. (Schreck), which did not submit a bid, protested prior to bid opening that the specifications were unduly restrictive of competition for failure to permit a steel cabled cog drive in lieu of the complete gear drive specified therein. Schreck refers to several other GPO procurements under which it received contracts for trucks equivalent in capacity to those being procured under the instant solicitation (except for high lift requirements), all incorporating Schreck's steel cabled drive system which GPO found acceptable. It states that other agencies, notably the Air Force and Defense Supply Agency, have found its steel cabled cog systems acceptable. Accordingly, Schreck requested that the instant solicitation be cancelled and readvertised.

GPO advises, and Schreck agrees, that the equipment being purchased under the instant IFB is not the same as that which GPO previously purchased from Schreck. Moreover, prior to issuance of the specifications under the instant IFB, GPO technical personnel advised that narrow aisle trucks [the subject of the present procurement] employing a single wheel for driving, steering and braking is subject to excessive torque. This type of configuration was found to present severe torque in starting, stopping and plugging which is better sustained in an all gear system. It was accordingly determined that GPO's operating environment and equipment maintenance requirements were such that trucks incorporating timing belts as part of the drive mechanism would not meet GPO's minimum needs.

In rebuttal, Schreck has questioned the foregoing determination, and has requested to be advised of the basis for GPO's determination. By supplemental report dated September 4, 1975, a copy of which has been furnished Schreck, the GPO has responded to Schreck's inquiries, including the following:

"Question No. 4 - 'What is the basis for measurement used in determining that amount of torque in the type of drive configuration employed in a narrow aisle reach truck?'"

The basis for measurement by the GPO is determined by maintenance service records of our vehicles operating under actual conditions. The GPO has operated electric industrial trucks at its present location for 40 years and has maintained comprehensive maintenance and repair records on all industrial trucks and other machinery. These records and our experience clearly indicate all undesirable features such as drive trains, tires, masts, controls, batteries, etc. We have attempted to eliminate undesirable components on our industrial truck fleet and all other machinery and equipment. We do not incorporate into our specifications any drive test unit requirements such as MIL-T-21643A as we are more interested in how various components withstand actual operating conditions. We are more interested in how many times a drive system will meet a specific drive test before it fails and what component fails.

"Question No. 5 - 'What torque rating will satisfy the requirements of GPO?'"

In order to answer this question it would require the evaluation of all design criteria of the applicable vehicle from all manufacturers using single wheel drive linear systems. Our preference is an evaluation commensurate with previous recorded experience.

"Question No. 6 - 'What is the basis for judgment in stating that the all-gear configuration better sustains higher degree of torque than a steel cabled belt?'"

The basis for judgment is as stated in our answer to question No. 4 and that is historical. The GPO maintenance records substantiate that no component of an all-gear drive system on a single wheel drive industrial truck has ever been replaced except in the case where the vehicle was involved in an accident. We have replaced timing belts on other units."

Our Office has consistently taken the position that the preparation and promulgation of specifications to reflect the minimum needs of the Government are matters primarily within the jurisdiction of the procuring activity, to be questioned by our Office only when not supported by substantial evidence. East Bay Auto Supply, Inc.; Sam's Auto Supply, 53 Comp. Gen. 771, 773 (1974). While specifications are to be drawn to permit the greatest amount of competition consistent with the needs of the procuring activity, the competitive bidding statutes are not violated merely because a particular bidder is unable to meet the Government's requirements, providing the specifications are reasonable and necessary to meet the agency's actual needs. See B-178288, May 24, 1973; also 49 Comp. Gen. 857, 862 (1970).

Based on the record before us, we believe that GPO has adequately justified its requirements for an all gear system for the procurement at issue and, therefore, our Office will not object to GPO's determination. Accordingly, Schreck's protest is denied.

In addition, a bidder on this procurement, Potomac Industrial Trucks, Inc. (Potomac) has protested the rejection of its low bid as nonresponsive. The solicitation included a provision on page 6 stating:

"Bid Acceptance Period

Bids offering less than 60 days for acceptance by the Government will be considered non-responsive and will be rejected."

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Upon the opening of bids it was discovered that Potomac's bid contained an inserted 30-day acceptance period and was rejected pursuant to the cited provision.

Potomac advises that the 30-day acceptance period was not on the bid when it was signed, that it has no explanation for its insertion, and that it does not take exception to the 60-day bid acceptance clause of the solicitation. Potomac further contends that the insertion should be waived as an informality or minor irregularity pursuant to paragraph 10b of Standard Form 33-A. It is contended that the "error" in bid acceptance period does not affect price, quantity, quality or delivery of the items ordered, and therefore does not go to substance.

With regard to the inserted 30-day acceptance period we note that it is inked in on Potomac's bid and was so recorded on the abstract of bids and prices received on the May 2, 1975, opening date. While the protester's Government Sales Manager, who signed the bid, states that he cannot account for its insertion, he has acknowledged that the bid passed through other personnel in his organization after he signed the bid prior to its submission to GPO. In any event, and while the 30-day insertion may have been unintended, there is no evidence in the record that would refute its authenticity.

We have consistently held that a provision in an invitation which requires that a bid remain available for acceptance by the Government for a prescribed period in order to be considered for award is a material requirement and that the failure to meet such a requirement renders a bid nonresponsive. 48 Comp. Gen. 19 (1968); 46 id. 418 (1966). To hold otherwise would afford an advantage to such a bidder over its competitors, since the bidder would have the option to refuse award in the event of unanticipated increases in cost, or to accept an award if desired by extending the acceptance period. Bidders complying with the invitation's acceptance period limitation would not have that option but would be bound by the Government's acceptance. See Miles Metal Corporation, B-182838, March 11, 1975, 54 Comp. Gen. \_\_\_\_\_. Furthermore, the deviation could affect the ultimate price of the item. See Miles Metal Corporation, supra.

Moreover, the rules under which correction of certain mistakes in bid are permitted are applicable only where the bid is responsive to the invitation and otherwise proper for acceptance. See 40 comp. Gen. 432 (1961) and cases cited therein. Since we have previously stated that the failure to meet a bid acceptance

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period limitation will render a bid nonresponsive, Potomac's deviation is ineligible for correction as a mistake. Accordingly, this protest is also denied.

However, in order to avoid any possible confusion in future solicitations where provisions are included establishing a minimum bid acceptance period, we are recommending to GPO by letter of today that appropriate language be included on the face of the bid form, at the space provided for optional insertion of other than 60 days, sufficiently cross-referencing the minimum bid acceptance period clause set out elsewhere in the solicitation. See Intercontinental Manufacturing Company, Incorporated, B-180784, June 4, 1974.

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Thomas D. Allen  
Comptroller General  
of the United States