

**DECISION**

19098 *Eisen*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-203132

DATE: August 11, 1981

MATTER OF: Barber-Colman Company

**DIGEST:**

Bid on FOB Origin basis renders bid  
nonresponsive where IFB requires bid  
on FOB Destination basis.

Barber-Colman Company (BC) protests the proposed award of a contract to J.B. Electronics, Inc. for electronic governor modification kits under invitation for bids DTFA-02-81-B-00135 issued by the Federal Aviation Administration (FAA). The FAA states that the low bid submitted by BC was not responsive because it offered to deliver the kits on a FOB Origin basis rather than on a FOB Destination basis as required by the IFB. BC contends that it had intended the delivery to be FOB Destination and its bid should be regarded as responsive. We agree with the FAA that BC's bid was nonresponsive.

The IFB required that the kits be delivered FOB Destination to Oklahoma City, Oklahoma. BC admits that its bid did not conform with this requirement but nonetheless contends that it should receive the contract because the FOB Origin (Rockford, Illinois) indication on its bid resulted from a clerical error. It asserts there are a number of mitigating factors which should excuse its error: 1) an error on the IFB Schedule forced BC to use a copy of its commercial quotation form which included the standard, preprinted phrase "FOB Rockford, Illinois"; 2) it was due to an oversight and the firm's limited experience in preparing bids for Government agencies; 3) the offer was intended to be FOB Oklahoma City, Oklahoma; 4) the firm correctly assumed freight was a minor part of the total cost and it had no reason for taking exception to the

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bid instructions; and 5) even if BC had intended for the FAA to absorb the freight costs, this would have only a trivial effect on price and thus could be waived as a minor informality.

On the IFB Schedule, spaces were provided for the entry of unit and total prices adjacent to four different quantity ranges of the modification kits. In addition, next to the item description but not adjacent to any particular quantity, blanks preceded by dollar signs were in the "Unit Price" and "Amount" columns. Apparently because these spaces were not tied to any quantity, a representative of BC called the contracting officer prior to bid opening for clarification. According to the FAA, whose account has not been disputed by the protester, BC was told that prior to bid opening the Government would announce which of the quantity ranges would form the basis for award and that "the quantity selected for award would be reflected in those spaces." Apparently unsatisfied with the explanation it received, BC chose to substitute for the IFB Schedule its own preprinted commercial quotation form which included the FOB Rockford terms, among others inconsistent with the IFB.

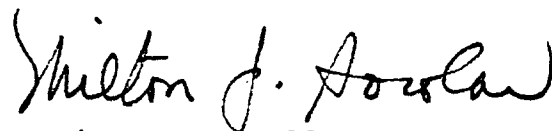
The purpose of the extra set of blanks in the IFB Schedule was not made clear in the IFB and we find BC's inquiry about them to be understandable. It is unfortunate, however, that BC chose to resolve any doubts it may have had about the pricing format by using a preprinted form containing commercial contract terms. In doing so, it offered delivery terms which directly conflicted with those stated in the solicitation.

Despite BC's alleged intent to delete the phrase FOB Rockford, Illinois and fill in FOB Oklahoma City, Oklahoma, the failure to do so cannot be excused because of an oversight by BC, its lack of experience in preparing bids or the firm's lack of any apparent reason for not following the IFB requirements. It is not the contracting officer's function to speculate as to the bidder's intent. A bid containing an alleged clerical error can only be called responsive where the exact nature of the error and the intended correct information are ascertainable from the bid itself. Canadian General Electric Company, Ltd., B-198261, May 19, 1980, 80-1 CPD 345. BC may have actually intended

the bid to be FOB Oklahoma City, Oklahoma, but that intent is not clear from the face of the bid. The bid itself states FOB Rockford, Illinois, and the lower price was consistent with the FOB Origin basis. See Prestex, Inc., B-191919, September 18, 1978, 78-2 CPD 205.

We have consistently taken the position that to insure the Government the benefit of free and open competition, it is mandatory that awards of contracts for required services or supplies be made upon the basis of the advertised specifications submitted for competition, including delivery and other performance requirements, and that only inconsequential or immaterial defects or variations which do not affect the price, quantity, or quality of the articles offered may be waived. Integrated Research & Information Systems, B-196456, February 13, 1980, 80-1 CPD 130; see Federal Procurement Regulations § 1-2.404-2(a), (b) (1964 ed.). By offering the kits on a FOB Origin basis instead of a FOB Destination basis, BC shifted the risk of loss or damage to the supplies while in transit to the Government, a burden which the IFB's FOB Destination clause specifically placed on the contractor. This change in contract terms must be regarded as affecting the contract price. Prestex, Inc., supra; B-146541, August 7, 1961. Since the exception taken by BC to the delivery requirement of the IFB is a material one affecting the substance of the bid, BC's bid was properly rejected as nonresponsive. See also Prestex, Inc., supra; Hart Metals, Inc., B-186833, September 24, 1976, 76-2 CPD 280.

The protest is denied.



Acting Comptroller General  
of the United States