

DECISION

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

FILE: B-213762

DATE: February 28, 1984

MATTER OF: Berbes Trailer Company

DIGEST:

1. Failure to acknowledge the receipt of an amendment which merely extends the bid opening date may be waived as a minor informality.
2. A bidder's failure to insert a gross shipping weight in its bid does not render the bid nonresponsive where the estimated guaranteed shipping weight was specifically provided in the solicitation in the event the bidder failed to insert the information.
3. Protest challenging the capability of the awardee to perform the contract relates to a matter of responsibility which will not be reviewed absent a showing that the contracting agency acted fraudulently or in bad faith.

Berbes Trailer Company (Berbes) protests the award of a contract to Lopez Machine Works (Lopez) under invitation for bids (IFB) No. N00383-83-B-0216, issued by the Navy Aviation Supply Office, Philadelphia, Pennsylvania, for a trailer for missile and bomb hauling.

We deny the protest in part and dismiss it in part.

Berbes contends that Lopez' bid should have been rejected as nonresponsive because Lopez failed both to acknowledge amendment No. 0003 to the IFB and to insert a gross shipping weight in its bid in response to IFB clause K-1156. Berbes also questions whether Lopez can handle the additional cost it will allegedly have to incur over the guaranteed shipping weight. Berbes further argues that specialized tooling is required to make the trailer in question, and that the tooling is not available to anyone

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other than Berbes. Thus, Berbes questions Lopez' ability to perform the contract.

Concerning Lopez' failure to acknowledge amendment No. 0003 to the IFB, the amendment did nothing more than to extend the bid opening date indefinitely. The failure to acknowledge receipt of an amendment which merely extends the bid opening date may be waived as a minor informality. Tennier Industries, Inc., B-207277.2, May 25, 1982, 82-1 CPD 499. We therefore find that the Navy properly waived Lopez' failure to acknowledge the amendment.

As to Lopez' failure to insert a gross shipping weight in response to IFB clause K-1156, that clause provides:

"(A) Bidders/Offerors are requested to insert in the space provided below the gross shipping weight of one each of the articles to be furnished under the following item(s). If more than one article is to be shipped in a container, the bidder/offeror shall calculate the gross shipping weight by adding to the shipping weight of the articles a pro rata portion of the weight of the container and any packaging or packing materials.

Item	Gross Shipping Weight (Pounds)
0001	

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"(C) If a bidder/offeror fails to insert a gross shipping weight in the space provided above or if a bidder/offeror by the use of the word approximately or other indefinite word or phrase fails to insert a specific weight, the guaranteed shipping weight of the article to be delivered hereunder shall be deemed to be the weight set forth below for that article.

Item	Guaranteed Shipping Weight (Pounds)
0001	2508 LBS."

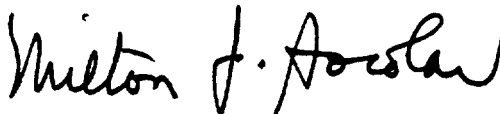
Berbes contends that the guaranteed shipping weight of 2,508 pounds pertains to the weight of the unit to be shipped, but that the IFB required the unit to be crated in

a box which weighs in excess of 700 pounds. Berbes argues that Lopez, by not inserting a gross shipping weight in its bid, thus failed to reflect the weight of the box in excess of the 2,508 pounds specified as the guaranteed shipping weight as well as the box's additional cost.

The Navy contends that clause K-1156 only requested, not required, bidders to insert a gross shipping weight and, in fact, stated that "[i]f a bidder/offeror fails to insert a gross shipping weight in the space provided above, . . . the guaranteed shipping weight of the article to be delivered . . . shall be deemed to be . . . 2,508 lbs." The Navy also argues that our decision in Patty Precision Products Company, B-188469, July 25, 1977, 77-2 CPD 44, is controlling. In that decision, we held that a bid failing to include guaranteed shipping weights and dimensions, but complying with all the terms and conditions of the IFB, is responsive where the IFB specifically states estimated weights and dimensions in the event of a failure by a bidder to insert the information.

We agree that our decision in Patty Precision Products Company, *supra*, is apposite. In the instant case, there is no doubt that Lopez agreed to all the terms and conditions in the IFB. Clause K-1156 specifically stated a guaranteed shipping weight as an estimate in the event of a failure by a bidder to insert a gross shipping weight. Accordingly, we conclude that the Navy properly determined Lopez' bid to be responsive in spite of Lopez' failure to insert a gross shipping weight under clause K-1156.

With regard to Berbes' questioning of Lopez' ability to handle the alleged additional costs incurred for the box over the guaranteed shipping weight and to perform the contract due to the alleged unavailability of certain tooling, this relates to responsibility, which will not be reviewed by our Office absent a showing that the contracting officer acted fraudulently or in bad faith. Crown Point Coachworks and R&D Composite Structures; North American Racing Company, B-208694; B-208694.2, September 29, 1983, 83-2 CPD 386. It is not alleged that either exception is present here and, accordingly, we will not review this matter.

for 
Comptroller General
of the United States