



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Discount Machinery & Equipment Inc.—
Request for Reconsideration
File: B-223048.2
Date: July 1, 1986

DIGEST

Protester's bid was properly rejected as nonresponsive because it offered to deliver the equipment within 90 days after receipt of contract where IFB required a 90-day delivery as of the contract award date. The Federal Acquisition Regulation interprets such a bid as adding 5 days to the specified number of days as an allowance for delivery through the ordinary mails.

DECISION

Discount Machinery & Equipment Inc. (Discount) requests reconsideration of Discount Machinery & Equipment Inc., B-223048, May 23, 1986, 86-1 C.P.D. ¶ 486, in which we dismissed Discount's protest of the rejection of its bid under solicitation No. DAAC01-86-B-0023, issued by the Anniston Army Depot.

We dismissed Discount's protest because its bid offering a delivery period 90 days after receipt of contract, where a 90-day delivery commencing as of the date of the contract was required, effectively added 5 days for delivery through the ordinary mails of notice of the contract award to the 90-day delivery period. Therefore, we found that Discount's bid was nonresponsive because it took exception to the required 90-day delivery period.

Discount argues that the language in its bid meant that it would deliver the equipment 90 days or sooner after the contracting officer signed the contract since, at the time of such signature, Discount had effectively received the contract, and that its bid therefore was responsive. The Federal Acquisition Regulation (FAR), 48 C.F.R. § 12.103(e) (1985), requires that:

"In invitations for bids, if the delivery schedule is based on the date of the contract, and a bid offers delivery based on the date the contractor receives the contract as notice of award, the contracting officer shall evaluate the


035829

bid by adding 5 days (as representing the normal time for arrival through ordinary mail). If the offered delivery date computed with mailing time is later than the delivery date required by the invitation for bids, the bid shall be considered nonresponsive and rejected . . ."

Accordingly, the Army had no option but to consider Discount's bid nonresponsive. Even if Discount's bid can reasonably be interpreted as suggested by Discount, the bid must be rejected since it would be subject to two reasonable interpretations, under one of which it is nonresponsive. Railway Specialties Corporation, B-212535, Oct. 31, 1983, 83-2 C.P.D. ¶ 519.

Discount also argues that the Army's rejection of its bid as nonresponsive is inconsistent with actions taken by another Army installation in another procurement, in which an award mailed to Discount on the last day of the acceptance period and received by Discount several days later resulted in a binding contract. We do not agree that there is any inconsistency. The action of the Army under that procurement was proper in that FAR § 52.214-10 states that "a written award or acceptance of a bid mailed . . . to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party." In the present case, as in the other, it is acceptance of the bid that results in a binding contract and triggers the beginning of the 90-day delivery requirement and not the bidder's receipt of the award notice. Since at least one reasonable interpretation of Discount's bid language was contrary to the delivery requirement, the bid was properly rejected as nonresponsive.

The request for reconsideration is denied.

for 
Harry R. Van Cleve
General Counsel