



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** Southern Systems, Inc.

**File:** B-224533

**Date:** February 25, 1987

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### DIGEST

An agency may not reject a low offer that contained a condition that the government "prepay" transportation costs on a carrier of the contractor's choice where such a condition does not seem reasonable and the offeror's explanation of a claimed clerical mistake is reasonable. The agency should have clarified this minor irregularity to correct the clerical error. Since this clarification would not constitute discussions, the agency could not reasonably rely upon any anticipated further delay caused by reopening discussions to justify rejecting the low offeror's proposal.

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### DECISION

Southern Systems, Inc. (Southern), protests the award of a contract for the retrofit (renovation) of a 15-ton hoist to Worldco, Inc., under solicitation No. F40650-86-B-0060 issued by the Air Force. We sustain the protest.

The solicitation, issued on February 12, 1986, requested sealed bids for two new 20-ton hoists and the retrofit of one 15-ton hoist. The three bids received (including the protester's bid) were determined nonresponsive and the decision was made to cancel the invitation for bids and complete the acquisition through negotiation. See Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 14.404-1(e)(1), 15.103 (1986). The solicitation contemplated multiple awards on the basis of the low acceptable offer per item.

On April 17, 1986, competitive proposals were requested from the three firms whose bids were determined nonresponsive and from Worldco whose bid had not been considered because it was

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received late. All proposals were determined unacceptable. The contracting officer subsequently conducted discussions with all offerors in which they were advised of proposal deficiencies and requested best and final offers (BAFO's) by August 27, 1986. Since the BAFO's received failed to comply with various solicitation conditions, discussions were reopened and new BAFO's were requested by September 22, 1986. Southern submitted the low acceptable proposal for the two new 20-ton hoists and award has been made to Southern for those items. Although Southern's price for the retrofit of the 15-ton hoist was low, the Air Force determined the firm's proposal for that item unacceptable based on its finding that language in Southern's second BAFO took exception to the requirement that the successful contractor transport the hoist from the base to its facility for repair at its expense.

Southern's second BAFO provides ". . . we are assuming the retrofit hoist will be prepaid and packaged on a pallet or other suitable for shipment container and loaded by the Government on a motor freight carrier of our selection." The agency determined that the protester's statement that the "hoist will be prepaid" required the government to prepay shipping costs.

Southern states that as a result of a typographical error-- "the word prepared was typed prepaid." Southern further states that while the inclusion of the word prepaid in its second BAFO is unfortunate, its original proposal clearly stated that Southern would pay freight costs "to and from [its] factory." In this regard, Southern argues that it should have been apparent that there was a conflict in its proposal and, thus, the Air Force should have been on notice of or suspected a mistake. Southern also points out that on September 26, it called the Air Force to advise the contracting officer of the typographical error and submitted a corrected second BAFO which the Air Force refused to consider.

The Air Force responds that "there was nothing in the wording of Southern's second BAFO to suggest the protester made a mistake," that is, that the protester actually intended the word "prepaid" to be "prepared," or that the firm by the above language did not intend the government to prepay shipping costs. The Air Force further states that the decision was made not to conduct a third round of negotiations to allow the protester to remove the exception to the RFP requirements, since "the procurement had been in process for an exceedingly long time" (more than 8 months), and the agency previously had conducted two rounds of negotiations in order to resolve proposal deficiencies.

We find that the Air Force should have realized that Southern did not mean to take exception to the solicitation's transportation requirements. First, the statement in question if interpreted as requiring the government to accept pecuniary responsibility for transporting the crane to the contractor's facilities is inconsistent with Southern's initial and first BAFO commitment to perform these services. Second, under the Air Force interpretation, the agency would be required to "prepay" the freight for a transportation-carrier that is to be selected by the contractor. Such a condition does not seem reasonable; it would be more reasonable for the Air Force to choose the carrier if the Air Force was required to "prepay." Indeed, when the statement is corrected, as Southern claims it intended this sentence to read, "prepared and packaged on a pallet," this condition is understandable and reasonable. Also, while Southern in its BAFO stated that if its representative was required at the loading, its offer should be raised by \$600, we do not find this to be inconsistent with the obligation of Southern to pay the transportation cost. Regardless of who paid the transportation costs, Southern was simply of the view that its representative would not be required at the loading site and therefore its basic offer price did not provide for that service.

Since it was more reasonable that Southern did not intend to take exception to the transportation requirements, the Air Force should have clarified this matter with Southern instead of simply rejecting the proposal. Clarification of such a minor irregularity to correct this clerical mistake does not constitute discussions requiring reopening discussions with the other offerors in the competitive range. FAR, 48 C.F.R. § 15.601. Therefore the matter could have been resolved without a third round of negotiations, and without any further meaningful delay in the procurement process.

Southern's protest is therefore sustained, on this basis and, since Southern's offer, as clarified, would be in line for award, we are recommending that Worldco's contract be terminated and that award be made to Southern. Consequently, we need not consider other issues raised by Southern.

*for Milton F. Jordan*  
Comptroller General  
of the United States