



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

**Matter of:** Mid-South Metals, Inc.

**File:** B-257056

**Date:** August 23, 1994

Nicholas Simonowich for the protester.  
Gregory J. Gusching, Esq., Defense Logistics Agency, for the agency.  
Adam Vodraska, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

The protester's submission of multiple credit card accounts was responsive to the solicitation's material requirement for a bid guarantee, despite the solicitation's instructions that allowed the use of credit card accounts, but prohibited bidders from offering multiple credit cards, where the credit card information submitted with the protester's bid amounted to a binding bid guarantee; the submission of multiple credit card accounts is a waivable minor informality in these circumstances.

### DECISION

Mid-South Metals, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 31-4688, issued by the Defense Reutilization and Marketing Service (DRMS) for the sale of certain surplus materials.

We sustain the protest.

The IFB solicited bids for any or all of 59 items of scrap materials. Bidders were required to provide a bid deposit in an amount equal to 20 percent of the total bid price, and the IFB provided that the bid deposit could be made by cash, cashier's check, certified check, traveler's check, bank draft, money order, or by charge to a "VISA or MasterCard" credit card account. Bidders were warned, however, that "SUBMISSION OF MULTIPLE CREDIT CARDS ARE NOT ACCEPTABLE AND WILL RESULT IN THE BID BEING REJECTED AS NONRESPONSIVE." [Emphasis in original.]

Mid-South, which submitted the high bid for 6 of the 37 items on which it bid, provided two credit cards as its bid guarantee. DRMS rejected Mid-South's bid as nonresponsive because Mid-South had submitted multiple credit cards, contrary to the IFB's instructions. This protest followed. The agency is withholding award pending our decision.

The protester contends that since it provided the credit card account information requested by the IFB, its bid was responsive to the solicitation's bid guarantee requirement. The protester also contends that since either card had a sufficient credit limit to satisfy the bid deposit requirements, its submission of two credit cards should be waived as a minor informality.

The agency responds that the issue of bidders listing multiple credit card accounts is one of responsiveness to the IFB's material requirements and is not a waivable minor informality. In support of this contention, DRMS cites the IFB's instruction that warns that the listing of multiple credit cards would render a bid nonresponsive. In this regard, DRMS states that the use of multiple credit cards was prohibited because of the administrative problems created when bidders requested that the agency charge numerous credit cards to reach the amount required for the bid deposit. For example, bidders have requested the agency to charge the cards in a specific order the maximum amount available under each credit card until the required bid deposit was collected. The contracting officer would then attempt to debit the first card the entire amount of the bid deposit and failing that, would reduce the amount debited until the amount was accepted by the processing bank. The contracting officer would repeat this process until the required bid deposit was collected.

A bid deposit is a form of bid guarantee designed to protect the government's interests in the event of a bidder's default. N.G. Simonowich, 70 Comp. Gen. 28 (1990), 90-2 CPD ¶ 293. A bid deposit obligates a bidder not to withdraw before award and to pay the full purchase price; while a bid deposit may be applied towards the purchase price of goods being sold by the government, in the event the bidder defaults on his contractual obligations, the government may retain the deposit as liquidated damages. Id. The submission of a binding bid guarantee is a material condition of responsiveness with which a bid must comply at the time of bid opening. Castle Floor Covering, 70 Comp. Gen. 530 (1991), 91-1 CPD ¶ 510. Submission of a bid deposit in the exact manner and form called for by the solicitation demonstrates that the bidder has obligated

itself to forfeit the bid deposit in the event that it withdraws before award or fails to pay the full purchase price. N.G. Simonowich, 70 Comp. Gen. 335 (1991), 91-1 CPD ¶ 299.

Here, we find the protester's bid was responsive to the bid guarantee requirement and that the submission of multiple credit card accounts was a waivable minor informality. As required in the IFB, the protester indicated on the cover page of its bid that it had submitted a credit card account to be debited to cover the 20-percent bid deposit charge. The accompanying credit card information sheet, required from any bidder who intended to charge either the bid deposit or final contract price on its credit card, was completed properly by the protester (other than its listing of two credit card accounts). In other words, Mid-South's bid contained all the credit card information needed by the agency to charge the amount of the required bid deposit and represented a firm commitment to be liable for the bid deposit. Because Mid-South's bidding documents at bid opening clearly bound it to furnish the bid deposit by means of a credit card charge--an instrument explicitly approved for use as a bid deposit in the IFB--and because Mid-South listed a credit card number to be charged the required bid deposit amount, Mid-South's bid was responsive. Consequently, Mid-South's submission of an additional credit card number did not affect Mid-South's binding bid guarantee commitment. See N.G. Simonowich, 70 Comp. Gen. 335, supra (awardee's submission of credit card information was responsive to the bid guarantee requirement, although the credit card listed had an insufficient credit limit and the awardee had to substitute another credit card prior to award).

Because there is no doubt that Mid-South intended to be bound to its bid, Mid-South's failure to follow the IFB's instructions against submittal of multiple credit cards may be waived as a minor informality. Federal Acquisition Regulation (FAR) § 14.405 defines a minor informality or irregularity as "one that is merely a matter of form and not of substance. [For example,] some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders." While Mid-South deviated

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<sup>1</sup>While the protester did not list the dollar amount of the bid deposit or the total dollar amount of its bid price, the protester's total bid price was easily ascertainable from its bid and it authorized the agency to charge its credit account for 20 percent of the total bid price. See Vista Contracting, Inc., B-255267, Jan. 7, 1994, 94-1 CPD ¶ 61.

from the exact instructions of the IFB, it nevertheless provided credit card information that would allow the agency, if required, to debit Mid-South's account, which is sufficient to satisfy the purpose of the bid deposit requirement. Since Mid-South's deviation from the exact requirements of the IFB did not have a material effect on its legal obligations, it may be waived regardless of the instruction's mandatory nature. See Stone Forest Indus., Inc., B-246123, Feb. 7, 1992, 92-1 CPD ¶ 161 (requirement for initialing changes to bid is a matter of form and omission may be excused as a minor informality); Boardsen ASSOCS., Inc., B-245876, Jan. 27, 1992, 92-1 CPD ¶ 115 (bidder's failure to insert the word "none" in the Certificate of Procurement Integrity to confirm lack of procurement violations, despite instruction to "Enter None if None Exist," is not a material omission which would make the bid nonresponsive).

Whether or not a bidder can offer a credit card with sufficient available credit for the amount of the bid deposit concerns the bidder's responsibility. See N.G. Simonowich, 70 Comp. Gen. 28, supra. In view of the asserted administrative problems that may result from aggregating several credit card accounts to obtain a sufficient bid deposit, it seems reasonable for an agency to decline to allow such aggregation as acceptable security. In this case, however, the record shows that either of the two credit card accounts listed by the Mid-South had available credit limits sufficient to charge the bid deposit. Under the circumstances, we think that the contracting officer should ask Mid-South pursuant to FAR § 14.405 to cure the informality by designating which of the two credit cards the agency should charge, or should simply waive the dual credit card submittal and proceed to charge the entire bid deposit amount to one credit card or the other. Since we find that Mid-South's bid was responsive to the bid guarantee requirement, we recommend that DRMS award the sale to Mid-South on those items for which Mid-South was the high bidder, if Mid-South is determined to be responsible.

The protest is sustained.

/s/ James F. Hinchman  
for Comptroller General  
of the United States