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DECISION

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

FILE: B-195882

DATE: September 19, 1979

MATTER OF: Environmental Tectonics Corporation

[Protest of Bid Rejection as Nonresponsive]

DIGEST:

1. Where IFB requires delivery within 150 days after date of award, bid offering delivery within 150 days after receipt of order extends delivery date beyond requirement in IFB, and therefore constitutes material deviation from terms of IFB.
2. Mistake in bid rules may not be applied to bids which are nonresponsive.

Bidder responsiveness
Bid errors
Bid specifications
[Bid rejection]
[Delivery terms]

Environmental Tectonics Corporation (ETC), protests the rejection of its bid under invitation for bids (IFB) No. 0174-79-B-0131 issued by the Naval Ordnance Station, Indian Head, Maryland. ETC's low bid was rejected because the Navy determined that it was nonresponsive to the delivery requirement specified in the IFB.

We are informed that the solicitation required delivery by "150 Days ADC" (after date of contract). ETC's bid, however, provided for delivery "150 Days ARO" (after receipt of order). Because of this difference between the delivery terms in the IFB and those contained in ETC's bid, the Navy determined that the bid was nonresponsive.

The protester contends that the difference in delivery terms should have been waived as a minor informality, rendering its bid responsive. Alternately, ETC urges that its use of the term "ARO" was an obvious mistake, for which the contracting officer should have requested verification and permitted correction.

This case is one in which it is clear from the protester's initial submission that the protest is without legal merit, and we will decide it on the basis of this submission without requesting an agency report. Industrial Maintenance Services, Inc., B-195216, June 26, 1979, 79-1 CPD 476.

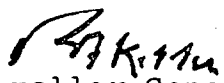
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Standard Form 33A, which is to be included in solicitations of this type, provides that acceptance or award is effective from the date the award is mailed, not from time of its receipt by the contractor which, of course, would occur at a later time. 45 Comp. Gen. 700, ~~708~~ (1966).

Where, as here, an invitation for bids requires delivery within a stated period, time must be regarded as of the essence of the resulting contract, Parker-Hannifin Corporation, B-186385, August 3, 1976, 76-2 CPD 120, and we have consistently held that where the inclusion of a qualification in a bid has the effect of extending the promised delivery beyond the date required by the solicitation, the bid is nonresponsive and must be rejected. Parker-Hannifin, supra.; Imperial Eastman Corporation, 55 Comp. Gen. 605 (1975), 75-2 CPD 417. ETC's bid promising delivery within 150 days "ARO", rather than 150 days "ADC" as specified in the solicitation, extends the time of delivery. Such a deviation cannot be waived as a minor informality since delivery terms represent material requirements. See, e.g., 48 Comp. Gen. 420, 422 (1968). Nor may ETC's bid be corrected under rules governing mistakes in bids since errors in bids which may be corrected after opening are those which do not affect the responsiveness of the bid. Imperial Eastman Corporation, supra.

The protest is summarily denied.


Deputy Comptroller General
of the United States

Robert F. Keller