

DECISION

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

60749

FILE: B-185034

DATE: April 13, 1976

MATTER OF: A. C. Ball Company

99072

DIGEST:

1. Where invitation required delivery within 240 days, timely telegraphic bid which stated delivery would be "249 days as required" was nonresponsive notwithstanding bidder's allegation that apparent clerical mistake was subject to correction pursuant to ASPR § 2-406.2, since bid which fails to meet IFB delivery schedule cannot be made responsive by changing offered delivery schedule and must be rejected for material deviation. Moreover since bid was nonresponsive it may not be corrected after bid opening since rules permitting correction of mistakes in bids are for application only when bid as submitted is responsive.
2. Telegraphic bid received after bid opening, while offering specified delivery time of 240 days, may not be considered since there is no evidence that its lateness was caused by mishandling by Government personnel after its receipt.

The A. C. Ball Company (A. C. Ball) protests the award of a contract to Bertot Industries, Inc. (Bertot), under invitation for bids (IFB) No. DSA700-75-B-2693, issued by the Defense Supply Agency, Defense Construction Supply Center (DSCS), Columbus, Ohio. Bids were solicited for eight (8) CLINs of Ring Assembly, NSN 4320-00-318-7241, to be delivered within 240 days after the date of award. DCSC's records indicate that the solicitation was sent to 59 firms including A. C. Ball. Since A. C. Ball alleges nonreceipt of the solicitation, it must be assumed that the firm's copy became lost in the mails. Nevertheless, A. C. Ball was one of the seven firms responding to the 10:30 a.m. time for bid opening on July 9, 1975.

Telegraphic bids were permitted under the solicitation and a timely telegram was received from A. C. Ball which stated that delivery would be "249 days as required." A second telegraphic bid was received after bid opening which specified delivery as "240 days." Although it was the second low bidder, A. C. Ball was advised by letter dated July 10, 1975, that its late offer could not be considered. However this correspondence did not clearly indicate that it referred to the second telegraphic bid.

In its July 18, 1975, protest letter to DCSC, A. C. Ball explained that two telegraphic responses were sent to insure that its offer would arrive in time. It admitted that the first telegram did mistakenly read "249 days as required" instead of the "240 days" which it intended to send and which it did so indicate in the second message. Since the first telegram bid "as required," A. C. Ball believed that this mistake was the type which was apparent on its face and would not preclude it from receiving a contract, if as it correctly predicted, the low bidder had made a mistake in bid. Finally, it alleged that the necessity for a telegraphed bid would have been avoided if it had been sent a copy of the bid set.

On September 24, 1975, the contracting officer advised A. C. Ball that its protest was denied because the first telegraphic bid was nonresponsive to the required delivery schedule of the solicitation, and that the second telegraphic bid could not be considered because it was late. Therefore, its bid was rejected since the only timely offer received from that firm was found to be nonresponsive. The contract was subsequently awarded to the third low bidder, Bertot, after the low bidder was permitted to withdraw its bid because of mistake.

Clause H07 of the solicitation required delivery of all items within 240 days after award. However, it also cautioned bidders that: "* * * bids failing to meet the required delivery schedule will be rejected as nonresponsive." In addition, Armed Services Procurement Regulation (ASPR) § 2-404.2(c) (1975 ed.), requires rejection as nonresponsive of any bid which fails to conform to the delivery schedule or permissible alternates stated in the invitation.

Contracting officers, pursuant to ASPR § 2-406.2, supra, may permit correction of clerical mistakes apparent on the face of a bid prior to award, however, such authority does not extend to waivers of material variations to the terms and conditions of the invitation. In this regard, it is well established that a bid which fails to meet the delivery schedule set by an invitation

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must be rejected as materially deviating from the requirements of the IFB. Nor may a bid rejected for failing to meet requirements of the delivery schedule be made responsive by extrinsic evidence after bid opening as to what in fact was intended. See 38 Comp. Gen. 819 (1959).

The responsibility for the preparation and submission of a bid rests with the bidder. While it may be that an error was made in A. C. Ball's bid, such error was in no way induced or caused by the Government. Moreover, it was not clear from the face of the message received, "249 days as required" that it was not the bid intended. A. C. Ball's use of the term "as required" coupled with a longer delivery estimate merely created a further ambiguity with respect to its understanding of the IFB's requirements at the time the first telegraph bid was submitted. Consequently, the bid as received at bid opening was properly rejected. Also, A. C. Ball's contention that correction should have been allowed under rules applicable to clerical mistakes (ASPR § 2-406.2) was properly rejected since corrections under ASPR § 2-406 (Mistakes In Bids) are only applicable when the bid as submitted is responsive to the terms of the invitation. Cam Industries, Inc., B-184542, November 11, 1975, 75-2 CPD 292.

Furthermore, the subsequent receipt after opening of A. C. Ball's message offering delivery in accordance with the IFB was properly not for consideration since there has been no showing that its lateness was caused by mishandling by Government personnel after its receipt.

For the above reasons, the A. C. Ball's protest is denied.

Deputy


Comptroller General
of the United States