



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

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B-178090

April 27, 1973

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Stroud & Smith
1407 Main Street
Suite 1300
Dallas, Texas 75202

Attention: Ronald W. Kessler, Esquire

Gentlemen:

Reference is made to your letter dated April 4, 1973, and prior correspondence, on behalf of Byrnes Distributing, Inc. (Byrnes), protesting against the rejection of Byrnes' low bid as nonresponsive under invitation for bids F41613-73-B-0019, issued by the Department of the Air Force, Carswell Air Force Base, Texas. We have been informally advised by the Air Force that the contract was awarded to Carrier-Bock Company (Carrier) on April 6, 1973.

The subject solicitation, issued on December 15, 1972, invited bids for supplying four to seven air-cooled condensing units and specified a desired delivery within 30 days and a required delivery within 45 days after the date of receipt of delivery order. Bids were opened on January 31, 1973. Beneath the required delivery schedule was a section, which was to be completed by the bidder, entitled "Bidders Proposed Delivery Schedule." It provided as follows:

Delivery within _____ days after receipt of delivery order.

Byrnes filled in the blank space in the following manner:

Delivery within 45 to 60* days after the date of receipt of delivery order.

*Delivery subject to prior sale or manufacture[r]s production at time of order.

The contracting officer rejected Byrnes' bid as nonresponsive because of a failure to conform to the required delivery schedule set forth in the solicitation.

[Protest of Bid Rejection as Nonresponsive]

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It is your position that the only logical interpretation of the "45 to 60" days language in the Byrnes' bid is that the bidder is capable of and committed to deliver within the required 45 days. You state that the asterisked provision applies to the 60 days "and that any restriction put on this delivery schedule applies only to that designation." It is clear to us, however, that the bid offered only a possibility rather than a firm commitment that delivery would occur within 45 days. This Office has consistently held that where a solicitation requires delivery within a specified period of time, a bid which offers a later delivery date will be considered as nonresponsive and rejected. 36 Comp. Gen. 181 (1956).

You also point out that Byrnes has since offered to provide the items within 14 days. This offer was made to the contracting officer when he decided to reject Byrnes' bid. However, as the contracting officer recognized, such an offer made after the bid opening could not be considered consistent with the rules governing advertised bidding. It is a fundamental rule of advertised bidding that a bidder may not be permitted to change its bid after the bids are opened. As stated by the court in City of Chicago v. Mohr, 74 N.E. 1056, 1058 (1905), "when a bid is permitted to be changed [after bid opening] it is no longer the sealed bid submitted in the first instance, and, to say the least, is favoritism, if not fraud - a direct violation of law - and cannot be too strongly condemned." See 37 Comp. Gen. 110, 112 (1957); 40 Comp. Gen. 668, 671 (1961).

Accordingly, we concur in the contracting officer's rejection of Byrnes' bid as nonresponsive.

In your correspondence of April 4, 1973, you allege that if Byrnes' bid is held nonresponsive then the bid of the Carrier-Bock Company is likewise nonresponsive. Carrier completed the "Bidders Proposed Delivery Schedule" as follows:

Delivery within Ten^h days after the date of receipt of delivery order.

*Based upon today's factory inventory there are seven (7) units available for immediate shipment - 30 Jan 1973.

You contend that by this asterisked provision Carrier has conditioned delivery upon its factory inventory and, therefore, has created doubt concerning its ability to comply with the required delivery schedule.

We do not think that this provision renders the bid nonresponsive. Carrier has clearly proposed a 10-day delivery period. If this proposed

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delivery schedule were conditioned upon factory inventory, the bid would be nonresponsive. However, we do not read this provision as imposing such a condition. We think that the plain import of the subject language was to indicate to the contracting officer the information that Carrier had the required units on hand for immediate shipment should the Air Force so desire.

Accordingly, your protest against the award is denied.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

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