



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

E-179021

October 30, 1973

40170

Delaware Valley Machinery, Incorporated
65 West Street Road
Warminster, Pennsylvania 18974

Attention: Mr. Daniel J. Murphy
Vice President

Gentlemen:

We refer to your wire dated June 27, 1973, and subsequent correspondence, protesting the award of two contracts to Egan Machinery Company (Egan) under Invitations for Bids (IFB) Nos. 82 and 86, issued by the United States Mint, Philadelphia, Pennsylvania.

IFB No. 82 requested bids on two 10,000-pound payout reels which feed metal into coinage presses. IFB No. 86 called for a single payout reel for an identical purpose. The only apparent difference between the solicitations was that under the latter the reel was to be placed in a limited area between two existing machines. Thus, IFB No. 86 requested each bidder to visit the installation site and furnish with his bid a dimensional plan of his proposed reel, in order that a determination could be made as to whether the unit was suitable for use in the limited area.

Three bids were received under both solicitations, which were opened on May 31, 1973, as follows:

	<u>IFB No. 82</u>	<u>IFB No. 86</u>
Delaware Valley Machinery, Inc.	\$13,200.00	\$6,990.00
Egan Machinery Company	17,790.00	8,895.00
Louis C. Hahn, Incorporated	24,821.00	12,444.90

The Delaware Valley Machinery bids were determined to be nonresponsive for failure to offer reels as specified in the invitation. On June 15, 1973, the contracting officer awarded contracts under IFBs Nos. 82 and 86 to the second low bidder, Egan.

[Contract Award Protests]

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You urge that your bids should not have been rejected because the machines you offered "exceed the General Requirements and detailed specifications of the bid." Additionally you state that " * * * Along with being the low bidder, there is no area in which we are not technically responsive to the specifications."

Specification 2.1.2, identical in both solicitations, required the payout reels to be constructed with:

"Heavy duty drive with A.G.M.A. high performance elliptoidal, helical teeth providing 98% efficiency, and running in oil to provide maximum drive reliability. Heat treat all gears and straddle mount on ball bearings."

In the Department of the Treasury's report to this Office the following was noted:

"The Bureau of the Mint determined that the reel offered by Delaware Valley Machinery did not meet Specification 2.1.2. In response to the detailed Specification 2.1.2, Delaware Valley Machinery described only a 'heavy duty drive' * * *. However, a catalogue furnished with the Delaware Valley bid contained the statement 'Chain and Sprocket, for positive, reliable drive.' * * *

"This type of drive does not meet the requirements of Specification 2.1.2. The 'Chain and Sprocket' drive referred to in the Delaware Valley bid is a drive system used by some payoff reel manufacturers. This system uses a chain and sprocket to drive the reel spindle rather than interrelated gears mounted directly on the spindle. This system, because of the play in the chain, creates linkage problems which do not occur with the gear system specified in Specification 2.1.2.

"Since Delaware Valley Machinery bid showed no intention of supplying a payoff reel with the specified drive system, and in fact offered a reel which contained a drive system which was different from that required by the Specification 2.1.2, its bids on I.F.B. No. 82 and No. 86 were determined nonresponsive."

In our decision B-176484(2), December 21, 1972, we stated that, the "administrative agencies have the primary responsibility for drafting specifications which reflect the minimum needs of the Government, as well as the responsibility of determining whether the product offered meets these specifications."

You have not contended that the type of drive specified in the solicitations exceeds the Government's minimum needs, and we are aware of no basis for disagreement with the administrative conclusion that a chain and sprocket drive fails to satisfy these needs. In view of the foregoing, we must conclude that the contracting officer properly rejected your bid as nonresponsive.

You next contend that Egan should not have been awarded either contract because it " * * * took exception to the price and delivery specifications * * * ." In this connection, we note that both IFBs required the supplies to be delivered F.O.B. destination. Egan's bids consisted of completed Standard Forms No. 33 and Egan's standard quotation form which described in detail the offered machinery. The latter included the notation: "FOB motor carrier, Somerville, New Jersey, or other shipping point." However, by cover letters attached to each of its bids, Egan specifically disclaimed any provisions which might differ from those contained in the IFB. The letters stated in part:

"The attached quotation describes in detail the subject machine; however, if any discrepancies appear between our quotation and your specifications, the latter will prevail."

We agree that, standing alone, the statement in Egan's quotation form changing the terms of delivery creates doubt concerning that firm's intention to meet the requirements of the solicitation. We have held that a bid qualified in this manner must be rejected as nonresponsive since the bidder would have an option after award to deviate from the specified requirements. See B-175660, June 1, 1972, copy enclosed, where the bid contained a similar statement.

However, in the instant case, Egan's bids included the statements in its cover letters that in the event any discrepancies appeared between its quotation and the invitation for bids, the latter

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would prevail. This statement, in our opinion, removes any doubt as to Egan's intent, and deprived Egan of any option to deviate from the delivery requirements, in contrast to B-175660, supra. Therefore, it is our conclusion that the intent of Egan's bid, based upon a reasonable construction of its entire contents, is not ambiguous or nonresponsive in this respect.

Finally, you contend that Egan's bid under IFB No. 86 was non-responsive because of a failure to furnish a "plan outline of his unit and located with dimensional clearances at the installation site," as required by the solicitation. In this regard, both the administrative report to this Office and our own examination of Egan's bid package reveal that such drawings were furnished with the bid following the requested site visit.

For the foregoing reasons, your protest is denied.

Sincerely yours,

Paul G. Dembling

For the

Comptroller General
of the United States