



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Material Handling, Inc.

File: B-278107

Date: December 29, 1997

A. Sid Goss for the protester.

Major Sandra J. Fortson, Department of the Army, for the agency.

Robert Arsenoff, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid in which protester's required descriptive literature reserved the right to make specification changes without notice was properly rejected as nonresponsive.

DECISION

American Material Handling, Inc. (AMH) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAHC76-97B-0005, issued by the Department of the Army for two 15,000-pound forklifts for Fort Richardson, Alaska.

We deny the protest.

BACKGROUND

The IFB was issued on July 18, 1997, and bid opening was on August 25. Note 2 of the price schedule required bidders to submit descriptive material with their bids to show that the items offered met the specifications listed in attachment 1 to the IFB. Note 2 also referred bidders to the "Descriptive Literature" clause (Federal Acquisition Regulation (FAR) § 52.214-21)) set forth in full text in the IFB. Subsection (c) of that clause states: "The failure of descriptive literature to show that the product offered conforms to the requirements of this solicitation will require rejection of the bid."

All eight bids received were rejected as nonresponsive because the accompanying descriptive literature failed to demonstrate compliance with the IFB specifications. AMH's bid was rejected as nonresponsive for a number of reasons including the repeated statement in its descriptive literature that "all specifications are subject to change without notice." (Emphasis in original.)

Amendment 0003 was issued on September 10, canceling the IFB and converting the acquisition to one using negotiated procedures; in addition, and in view of funding restraints for Fiscal Year 1997, the requirement for forklifts was reduced from two to one with an option to purchase an additional forklift if sufficient funds were available.

Subsequently, the agency determined that its specifications were defective and, accordingly, on September 12, canceled the negotiated solicitation entirely prior to the receipt of proposals. On September 17, a request for quotations (RFQ) was issued with revised specifications and a September 22 due date. The RFQ sought quotations for one 15,000-pound forklift and an optional 10,000-pound forklift. AMH, among other firms, submitted a quotation. This protest was filed on September 19, and the agency informs us that the selection process under the RFQ is being held in abeyance pending our decision.

PROTEST AND ANALYSIS

As indicated above, AMH's bid was rejected as nonresponsive because the agency determined that the descriptive literature describing the forklifts the protester proposed to supply did not demonstrate compliance with the specifications set forth in the IFB. AMH principally¹ challenges this determination, and the consequent cancellation of the IFB, and asserts that its bid was responsive because, notwithstanding the problems the agency discovered in its descriptive literature, the bid otherwise contained assurances that the firm was offering forklifts meeting "required specifications." AMH also maintains that any discrepancies in its descriptive literature could have easily been resolved by the agency contacting the firm to correct what the protester describes as minor informalities.

As a general rule, where descriptive literature solicited and submitted for evaluation purposes contains a reservation of a right to change the specifications, the bid is nonresponsive. Erincraft, Inc., B-235829, Oct. 10, 1989, 89-2 CPD ¶ 332 at 2. The principal exception to the general rule is where it is clear from the face of the bid that the legend was not intended to reserve a right to change the offered product. Id. Blanket statements of specification compliance do not establish conformance with the specifications and thus do not serve to supersede the reservation of rights legend. See Electrophysics Corp., B-258674, Feb. 13, 1995, 95-1 CPD ¶ 63 at 3.

¹AMH also suggests that the cancellation of the negotiated procurement was improper. Since no offers were received in the 2 days in which the negotiated procurement was in existence, we fail to perceive how any potential offeror was prejudiced by the cancellation and resolicitation. AMH also intimates that the RFQ specifications may not be adequate if the forklifts are to be used to load military cargo aircraft; however, as the record demonstrates, the equipment is not to be used for this purpose.

Since there is no indication in AMH's bid that the legend reserving the right to change specifications without notice did not apply to the bid, the bid was properly rejected as nonresponsive. Erincraft, Inc., supra, at 2. Because this reservation to make specification changes without notice obviously has a potentially substantive effect on the quality of the items to be provided, it cannot be waived or corrected as a minor informality under FAR § 14.405, which is explicitly limited to matters of form or to immaterial bid defects or variations which have a negligible effect on price, quantity, quality, or delivery. Finally, because the bid was properly rejected and there is no showing that all of the other bids were not also properly rejected, it follows that the agency properly canceled the IFB for lack of receipt of a responsive bid. Federal Acquisition Regulation § 14.404-1(c)(8).

The protest is denied.

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