

DECISION



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

40841

FILE: B-184873

DATE: May 4, 1976

98981

MATTER OF: General Electric Company

DIGEST:

1. Low bid accompanied by unsolicited descriptive literature which was identified by the bidder as "specifications" for the instant procurement and which described equipment exceeding the space available for installation properly was rejected as nonresponsive. Photographs of conforming equipment contained in bidder's standard instruction booklet also submitted with bid at best created ambiguity as to bidder's intent.
2. Mistake in bid procedures are not available for correction of nonresponsive bid so as to make it responsive.
3. Monetary savings offered by protester's low nonresponsive bid do not outweigh public interest in strict maintenance of competitive bidding procedures.

The Corps of Engineers (Corps) rejected as nonresponsive the low bid of the General Electric Company (GE) for a portion of the electrical work described by invitation for bids (IFB) No. DACW68-75-B-0051. GE has protested against that action.

The majority of Schedule C of the subject IFB was for isolated phase bus structures, including potential transformer and surge protection (PT & SP) equipment for Little Goose, Lower Granite and Lower Monumental Locks and Dams. The PT & SP equipment was to be placed in cubicles which were of limited size. The drawings which formed a part of the IFB indicated that the back to front measurement of the cubicles was at its maximum 3 feet 6 inches. It appears clear from the record that GE manufactures PT & SP equipment in "two-high" and "three-high" configurations: the former exceeding the space available in the cubicles.

The IFB also contained a descriptive literature requirement which related to equipment other than that for PT & SP.

GE responded to this requirement by submitting a printed booklet entitled "Instructions Power Station Equipment All Welded Miniflux Isolated Phase Bus." The booklet appears to be a standard publication of the protester, intended for general use, and it makes no specific reference to the instant IFB. On one page of the booklet are photographs showing front and rear views of "three-high" PT & SP equipment.

GE's bid also included a 34-page typewritten document entitled:

"ISOLATED PHASE BUS SPECIFICATIONS

CORPS OF ENGINEERS
LITTLE GOOSE
LOWER MONUMENTAL
LOWER GRANITE
UNITS 4, 5, 6 (EACH STATION)"

Part of the information contained in this document was required by the IFB's descriptive literature clause. In addition, however, one sheet identified as "ITEM H-A3 LITTLE GOOSE, LOWER MONUMENTAL, LOWER GRANITE POTENTIAL TRANSFORMER COMPARTMENT", depicted PT & SP equipment in a "two-high" configuration. The drawing on this page showed the maximum front-to-rear dimension of this equipment to be 77 inches, which exceeded the 42 inches available in the cubicle. This drawing is the sole mention in GE's bid of the dimensions of its PT & SP equipment.

Since the GE drawing showed equipment which exceeded the available space, its bid was rejected as nonresponsive. Award of Schedule C was made to the next low, responsive bidder, H. K. Porter, in the amount of \$1,858,736.

In support of its position that its bid should not have been rejected, the protester states the inclusion of a drawing of "two-high" equipment was the result of a mistake, a fact which should have been obvious to the contracting officer for several reasons. First, GE notes that the "two-high" drawing was inconsistent with the photographs of a "three-high" unit in its instruction booklet. GE further states that it is not only a well-established manufacturer of "three-high" units but that in fact it has furnished "three-high" units in the past to the Corps at various projects including Lower Granite, Lower Monumental and Little Goose Locks and Dams. The protester asserts that these facts demonstrate that the nonconforming drawing was simply an error and did not stem from an intent to qualify its bid. GE concludes that the preservation of the integrity of the competitive bidding system could have been accomplished by acceptance of

its bid at a price which was approximately \$90,000 less than that of H. K. Porter's.

The contracting officer acknowledges that "G.E. has satisfactorily furnished similar equipment in the performance of other contracts with the Corps of Engineers, and equipment meeting the requirements of the contract drawings is standard with General Electric * * *." However, the contracting officer states, his knowledge of these facts "does not obviate the necessity for the instant bid to be responsive to the invitation. It is a fundamental principle of the competitive bidding system that the responsiveness of a bid must be determined from the contents of the bid itself, without extraneous aids or explanations submitted after bid opening, in fairness to those bidders whose bids were evaluated in accordance with and determined compliant with solicitation requirements* * *." We agree, and for the reasons stated below conclude that the application of this principle correctly resulted in the rejection of GE's bid.

Armed Services Procurement Regulation (ASPR) § 2-202.5(f) (1974 ed.) provided that unsolicited descriptive literature was to be disregarded "unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid." (Emphasis added.) Although GE asserts that it never intended to qualify its bid, we think the contracting officer reasonably concluded otherwise based upon his examination of "the bid or accompanying papers."

The drawing in question was included in typewritten material identified as "specifications" for this project. A "specification" is generally regarded as being a detailed and precise description of the product being purchased. See, e.g., Cummins Diesel Engines, Inc., B-184970, April 13, 1976, 76-1 CPD _____. The drawing for Item H-A3, which showed one dimension of the equipment as exceeding the available space, expressly referred to the instant project and contained a listing of the specific materials which would be required.

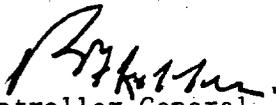
We are aware that the 43-page printed instruction book included with GE's bid contained photographs of equipment which would comply with the IFB requirements. We think the presence of these photographs in a publication which was intended for general distribution at best created an ambiguity as to what GE intended to supply, which would require rejection of the bid. See 49 Comp. Gen. 851 (1970).

GE suggests that the circumstances so strongly indicate that the nonconforming drawing was submitted by mistake, that some relief

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should be granted it on that basis. However, as the contracting officer observes, mistake in bid procedures are not available to correct a nonresponsive bid in order to render it responsive. Miles Metal Corporation, B-182838, March 11, 1975, 75-1 CPD 145. We also are of the opinion that the monetary saving represented by GE's bid does not outweigh the public interest in the strict maintenance of the competitive bidding procedures. 34 Comp. Gen. 82 (1954).

The protest is therefore denied.


Deputy Comptroller General
of the United States