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DECISION



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

FILE: B-188845

DATE: November 22, 1977

MATTER OF: Curtiss-Wright Corporation

DIGEST:

1. Rational basis exists for considering cumulative effect of temperature variations at valley and peak of operation in deciding whether combustion turbine generating unit meets solicitation requirement that "exhaust temperature variations from the average shall be such that stress on hot parts shall not be more than would be imposed by conventional peak operation."
2. Reliance of bidder on oral explanation by consulting engineer was at bidder's own risk since solicitation required bidders to request in writing any explanation desired regarding meaning or interpretation of specifications which would be followed by written addendum to all bidders.

Curtiss-Wright Corporation (Curtiss-Wright) has requested our Office to review the award made by the Massachusetts Bay Transportation Authority (MBTA) to Turbo Power and Marine Systems (TP&M) under project No. MA-03-0037.

This project is being funded, in part, by a grant from the Urban Mass Transportation Authority (UMTA) and therefore involves the expenditure of Federal funds.

The contract is to supply a combustion turbine generating unit for the MBTA South Boston Power Station.

Curtiss-Wright contends that the bid of TP&M was nonresponsive to solicitation paragraph IIID2 which provided:

"For the emergency operating mode with load characteristics as set forth in sub-paragraph C6 of this Section III, average exhaust temperature shall not exceed 930F and exhaust temperature variations from the average shall be such that stress on hot parts shall not be more severe than would be imposed by conventional peak operation.

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All other conditions shall be identical to those shown in sub-paragraph D1 above for a steady state, nonoscillating load."

Curtiss-Wright states that paragraph IIIC6 defines the "emergency operating mode" as the momentary maximum peak load capacity of 32,000 kw.

Curtiss-Wright argues that TP&M's proposal stated that the combustion engine which TP&M proposed had a conventional peak operation rating of 27,419 kw. Therefore, during the emergency operating mode (32,000 kw), the TP&M engine would have to operate at 5,000 kw over its conventional peak operation rating. Such operation necessarily creates more stress on hot parts than under conventional peak operations, contends Curtiss-Wright. TP&M's bid shows that its engine's exhaust temperature is 917F at its conventional peak rating of 27,419 kw and that at 32,000 kw the exhaust gas temperature is 958F. Since the 958F temperature exceeds the 930F stated in paragraph IID2, Curtiss-Wright states this clearly shows that the TP&M engine does not meet the specifications.

MBTA and UMTA respond to the above argument by stating that during the emergency operating mode, the unit will oscillate between 18,000 kw and 32,000 kw with an average output of 25,000 kw. This information was contained in paragraph IIIC6, which also noted that the oscillating load curve would not be a sine wave but a series of nearly straight lines between maximum and minimum loads. Since the unit will oscillate between 32,000 kw when the exhaust gas temperature is 958F and 18,000 kw when the exhaust gas temperature is 830F, the average temperature during the emergency operating mode will be 895F, within the requirements of the specifications.

The consulting engineers, who reviewed the bids for MBTA, have stated that while TP&M's unit may experience brief excursions of stress and temperature above the conventional peak value, that does not render the unit nonresponsive. The intent of the specifications is that the integrated detrimental effect of the stress and temperature exposure of the hot parts during cyclical load variations of the emergency operating mode not be more severe than would be imposed by conventional peak operation.

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We believe that Curtiss-Wright's contention that the exhaust gas temperature should not exceed 930F must fail. Paragraph IID2 refers to "the emergency operating mode with load characteristics as set forth in sub-paragraph C6 of this Section III." (Emphasis supplied.) These load characteristics are momentary peaks of 32,000 kw and momentary valleys of 18,000 kw with an average of 25,000 kw. Therefore, paragraph IID2 contemplated that the average exhaust temperature for these load characteristics shall not exceed 930F. The average exhaust gas temperature of 895F complies with this provision.

As noted above, the second part of paragraph IID2 states that "exhaust temperature variations from the average shall be such that stress on hot parts shall not be more severe than would be imposed by conventional peak operation." While Curtiss-Wright indicates that operation at 32,000 kw will result in an exhaust temperature variation from the average which will create more stress on the hot parts than under conventional peak operation, the language of the paragraph refers to exhaust temperature "variations" (plural). Thus, the clause lends itself to an interpretation that permits the consideration of the temperature at the valley as well as at the peak of operation. Therefore, we believe there was a rational basis for considering the cumulative effect of the temperature variations in deciding whether there would be a greater stress on hot parts than under conventional peak operation. See Copeland Systems, Inc., 55 Comp. Gen. 390 (1975), 75-2 CPD 237.

Curtiss-Wright further argues that it discussed this portion of the specifications with the consulting engineers prior to submitting its bid and was advised that any proposed unit would have to have a conventional peak rating of 32,000 kw. Since Curtiss-Wright did not have a single engine generating plant with that capacity, it proposed a dual engine plant which it contends prevented it from being the low bidder. The consulting engineers, according to Curtiss-Wright, told it that if the unit had to run above its conventional peak rating or had to run in an over-temperature condition in the emergency operating mode, the unit would be unacceptable. All of the above advice was conveyed orally.

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Section 6 of the Instructions to Bidders in the solicitation states:

"INTERPRETATION OF CONTRACT DOCUMENTS: If any prospective bidder is in doubt as to the true meaning of any parts of the Contract Documents, he may submit to the Director of Materials, Massachusetts Bay Transportation Authority, a written request for an interpretation thereof. The person submitting the request shall be responsible for its prompt delivery. Any interpretation of the documents will be made only by an addendum duly issued and signed by said Director of Materials. A copy of such Addendum will be mailed or delivered to each person receiving a set of such Contract Documents."

Therefore, even if Curtiss-Wright was advised as it contends, it acted at its own risk as such advice would not bind MBTA nor alter the solicitation documents without an addendum having been issued by the Director of Materials to all bidders. See Sheffield Building Company, Incorporated, B-181242, August 19, 1974, 74-2 D 108, and CFE Air Cargo, Inc., B-185515, August 27, 1976, 76-2 D 198.

Accordingly, our Office finds nothing improper in the award to TP&M.


Deputy Comptroller General
of the United States