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Mr. Fitzmaur

DECISION



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

[Protest of Bid Rejection is Nonresponsive]

FILE: B-199669

DATE: February 11, 1981

MATTER OF: Green Mountain Cabins, Inc.

DIGEST:

1. Bid which takes specific exception to IFB requirement for insulating glass by offering "regular" glass was properly rejected as nonresponsive.
2. Protest against specifications and drawings filed after bid opening is untimely under GAO Bid Protest Procedures and will not be considered on merits.
3. Protester is not "interested party" under GAO Bid Protest Procedures to protest rejection of bids submitted by two other companies since it has no direct economic interest and other companies have not protested to GAO.

Green Mountain Cabins, Inc. (GMC), protests the award of a contract to another bidder under invitation for bids (IFB) No. R9-04-80-34, issued by the Department of Agriculture, Forest Service, Huron-Manistee National Forest, Michigan (Forest Service), for a prefabricated log building to be delivered to the site of the Lumberman's Monument Visitor Center for assembly by the Forest Service.

GMC's bid was rejected as nonresponsive because it offered to provide "regular" glass windows instead of windows with insulating glass. GMC argues that the IFB term "insulating glass" is ambiguous, that its storm/screen windows are more efficient than insulating glass windows, that the IFB's specifications and drawings are defective, and that the Forest Service should not have rejected two other bids merely for failure to offer the exact shingle weight called for in the IFB.

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Paragraph 273 of the Technical Specification provides:

"All windows shall be wood frame, double hung type and shall include all hardware and screens. Frame shall be spline grooved to interlock with walls. Style shall be similar to that indicated on the plans. Size shall be approximately 3 feet by 5 feet 2 inches. Top of window shall be even with top of exterior doors. Windows shall be preassembled at the factory."

The plans referred to in this paragraph consist of a drawing which has a notation next to the area depicting the windows which states: "double hung window (type), insulating glass."

GMC submitted an unsolicited material list with its bid in which GMC specifically crossed out the printed word "insulated" and typed above that deletion the word "regular." The Forest Service concluded that since the IFB specifically calls for "insulating glass," GMC's clear exception to this requirement rendered the bid nonresponsive.

GMC argues that there is no clear definition for the term "insulating glass," but concedes that its windows do not utilize insulating glass. In the alternative, GMC argues that its proposed window system is superior to any product that might be considered insulating glass. The Forest Service, on the other hand, argues that the term "insulating glass" is not ambiguous, but is used to describe "two pieces of glass, separated by a hermetically sealed air space (or vacuum)." As to the superiority of GMC's window system, the Forest Service contends that this is a sales point and, whether true or not, does not satisfy the IFB's requirement for insulating glass.

We have held that the test to be applied in determining the responsiveness of a bid is "whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof."

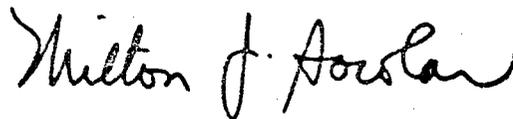
49 Comp. Gen. 553, 556 (1970). Here, GMC clearly did not offer the required insulating glass by taking specific exception on the material list. Further, the GMC bid is offering its "regular" glass which is undefined in the bid. Therefore, we find nothing unreasonable about the Forest Service's rejection of the bid as nonresponsive. See, e.g., Kreonite, Inc., B-199361, July 22, 1980, 80-2 CPD 62.

Regarding GMC's claim that the IFB's specifications and drawings are defective, under our Bid Protest Procedures, such protests must be filed in our Office prior to the date set for bid opening. See 4 C.F.R. § 20.2(b)(1) (1980). Since GMC filed its protest after bids had been opened, this ground of protest is untimely and will not be considered on the merits.

As to the rejection of other bids, under section 20.1(a) of our Bid Protest Procedures, a party must be "interested" in order to have its protest considered by our Office. Whether a party is sufficiently interested depends upon its status in relation to the procurement, the nature of the issues raised, and how these circumstances show the existence of a direct and/or substantial economic interest on the part of the protester. See, Die Mesh Corporation, 58 Comp. Gen. 111 (1978), 78-2 CPD 374.

In light of this, we do not believe that GMC is an interested party to protest the rejection of the two other bids for failing to offer the correct shingle weight, since GMC has no economic interest in such a protest. The two companies that submitted those bids are the proper parties to protest their rejection. Thus, since those companies have not protested the rejection of their bids, this ground of protest is not for our consideration.

Based on the above, GMC's protest is dismissed in part and denied in part.



For The Comptroller General
of the United States



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

B-199669

February 11, 1981

The Honorable James M. Jeffords
House of Representatives

Dear Mr. Jeffords:

We refer to your letter of August 13, 1980, to the Acting Administrator, General Services Administration, which was later forwarded to our Office, concerning the protest of Green Mountain Cabins, Inc., under solicitation No. R9-04-80-34 issued by the Department of Agriculture, Forest Service.

By decision of today, copy enclosed, we have dismissed the protest in part and denied the protest in part.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Fowler".

For The Comptroller General
of the United States

Enclosure