

DECISION



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

FILE: B-216989

DATE: February 14, 1985

MATTER OF: Mobile Drilling Company, Inc.

DIGEST:

1. Bid which constitutes offer to furnish a drill with a torque capacity of 6,000 ft.-lbs. at 27 revolutions per minute (RPM) instead of the required capacity of 5,800 ft.-lbs. at 50 RPM, took exception to a material requirement of the solicitation and was therefore properly rejected as nonresponsive.
2. Agency acted improperly in accepting a nonresponsive bid based on the bidder's explanation obtained after bid opening because the agency may not seek such a clarification after opening, as a bidder's intention to comply with the solicitation requirements must be determined from the bid itself without resort to such explanations.

Mobile Drilling Company, Inc. protests the award of a contract to Central Mine Equipment Company under invitation for bids (IFB) 84-30-R17 issued by the Federal Highway Administration (FHA) for an auger drill mounted on an all-terrain vehicle. Mobile contends that its bid was improperly rejected and further argues that Central's bid should have been rejected as nonresponsive.

We deny the protest in part and sustain it in part.

FHA received two bids in response to the solicitation, Mobile's \$90,000.00 bid and Central's \$99,822.00 bid. After FHA evaluated the descriptive literature submitted with the bid, it informed Mobile by letter of October 17, 1984 that its bid was nonresponsive because the drill offered by Mobile did not have sufficient drill head torque capacity. FHA found Central's bid responsive and awarded the contract to it on October 31.

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Mobile objects to the FHA's conclusion that its equipment does not meet the solicitation requirement that the drill head have a torque (rotational force) capacity of not less than 5,800 foot-pounds (ft.-lbs.) at 50 revolutions per minute (RPM) by arguing that its drill provides in excess of 6,000 ft.-lbs. at 27 RPM, and that there is no work reduction attributable to the 23 RPM differential.

FHA maintains that the torque capacity specified in the IFB is the minimum torque and rotational speed needed to accomplish the work required. FHA states that the torque and RPM specified in the IFB result in a "working capacity" of 55.2 horsepower (HP). It reports that based on the torque capacity listed in the literature submitted with Mobile's bid it concluded that the HP of the equipment offered by Mobile was only 30.6. FHA further reports that as a result of discussions held with Mobile it calculated that Mobile's drill could provide up to 47.2 HP. Since both figures were significantly below the required capacity, FHA states that Mobile's bid was properly rejected.

A responsive bid is one that on its face is an offer to perform, without exception, the exact thing called for in the invitation. J. T. Systems, Inc., B-213308, Mar. 7, 1984, 84-1 CPD ¶ 277. A bid which does not contain an unequivocal offer to provide the requested item in total conformance with the material terms of the solicitation is nonresponsive and must be rejected. A material deviation is one that affects the price, quality, quantity or delivery of the goods offered. Fluke Trendar Corp., B-196071, Mar. 13, 1980, 80-1 CPD ¶ 196. Despite its argument to the contrary, it is clear that Mobile's bid did take exception to the solicitation's torque capacity requirement and the protester has provided no basis upon which to question the agency's judgment that the exception would have a material impact on the drill's performance. See Le Prix Electrical Distributors, Ltd., B-212518, Dec. 27, 1984, 84-1 CPD ¶ 26. Further, we note from the record that FHA contacted Mobile after bid opening to enable that firm to further explain the capacity of its equipment as listed in the literature submitted with its bid. Although no bidder was prejudiced by this contact as Mobile's bid was rejected, this contact with Mobile after

bid opening for the purpose of allowing the bidder to clarify its descriptive literature was improper. A bidder's intention to comply with the solicitation requirements must be determined from the face of the bid itself without resort to any explanation furnished after bid opening. Modutech Marine, Inc., B-207601, Feb. 9, 1983, 83-1 CPD ¶ 144.

Mobile argues that its bid should have been accepted even though it may have taken exception to a solicitation requirement because its equipment offered safety features and an angle drilling capability in excess of the specification requirements. Since the bid was nonresponsive to the solicitation's torque capacity requirement, it is irrelevant whether the offered equipment may have exceeded some other solicitation requirements.

Mobile further contends that Central's bid was also nonresponsive and therefore should have been rejected. According to Mobile, Central's bid did not meet the specification requirement that the drill head have a forward speed range of 35 RPM to greater than 700 RPM. The protester states that Central's bid offered a drill with a speed range of only 100 RPM to 650 RPM.

FHA reports that during the review of Central's descriptive literature the contracting officer contacted Central and that firm stated that it would comply with the specification for the spindle speed. FHA states that it accepted Central's assurance and maintains that it will only accept a final product which complies with that requirement.

We have reviewed the record which contains Central's bid including its descriptive literature and the only portion which appears to pertain to drill head speed states: "Have a variable forward speed from 90 RPM to 1,000 RPM in fourth gear at 2,800 RPM engine speed achieved by at least a 4-speed transmission."

Thus, it appears from Central's bid that it did not comply with the requirement of a forward speed range of from 35 RPM to greater than 700 RPM. FHA does not argue that Central's bid as submitted was responsive or that

the forward speed range requirement was not material but maintains that it properly accepted Central's bid based on that firm's after bid opening assurance that its equipment would meet the specification. We disagree with the agency and conclude that Central's bid should have been rejected as nonresponsive. As stated earlier, to be responsive a bid must on its face offer to supply an item conforming to all material solicitation requirements. J.T. Systems, Inc., B-213308, supra. A bid which is nonresponsive on its face may not be changed, corrected or explained by the bidder after bid opening since to permit this would give the firm the option of accepting or rejecting a contract after bids are exposed. Amendola Construction Co. Inc., B-214258, Feb. 28, 1984, 84-1 CPD ¶ 255. We sustain this portion of the protest.

While we conclude that the award to Central was improper, due to the advance state of contract performance it is impracticable for our Office to recommend corrective action. We are, however, by letter of today bringing this matter to the attention of the Secretary of Transportation.

The protest is denied in part and sustained in part.

Harry R. Van Cleave
for Comptroller General
of the United States