



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Discount Machinery & Equipment Inc.

File: B-222641

Date: August 5, 1986

DIGEST

1. Although a compelling reason must exist to cancel an invitation for bids after bids have been opened in order to preserve the integrity of the sealed bidding system, such a reason exists where no responsive bid has been received from a responsible bidder.
2. Where an invitation for bids requires the submission of descriptive literature, a bid must be rejected as nonresponsive if the literature submitted evidences nonconformity with the material specifications of the solicitation. Thus, a bid was properly rejected as nonresponsive where the firm's printed product literature accompanying its bid stated that the firm's offered machine had a spindle speed range of 55-4250 rpm, rather than 50-3500 rpm as called for in the solicitation.

DECISION

Discount Machinery & Equipment Inc. (Discount) protests the post-bid opening cancellation of invitation for bids (IFB) No. DAAC89-86-B-0061, issued by the Department of the Army. The procurement was for the acquisition of 6 milling machines. Discount complains that the Army improperly canceled the IFB on the ground that all bids were nonresponsive as submitted, since the firm asserts that its own bid was responsive. We deny the protest.

BACKGROUND

The IFB was issued on March 7, 1986, with an amended bid opening date of April 17. The solicitation referenced the military specification and modifying purchase description applicable to the milling machines being purchased, and required the submission of descriptive literature so that the agency would be able:

" . . . to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award."

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Bidders were advised that any modifications proposed in their offered equipment so as to conform to the specification requirements were to be clearly described in their bids and clearly marked in the accompanying descriptive literature.

The Army received 8 bids in response to the IFB, but subsequently determined that all bids were nonresponsive. With regard to Discount's bid, the Army concluded that the firm's offered product did not meet the specification requirement that the milling machine head have a spindle speed range of 50-3500 revolutions per minute (rpm). Discount's printed product literature as submitted with its bid stated that its machine had a spindle speed range of 55-4250 rpm. Since all bids were determined to be nonresponsive, the Army canceled the IFB with the intent to resolicit the requirement absent the military specification, an action which the Army feels will serve to broaden the competition.

Discount now protests that the cancellation was improper because its own bid was responsive to the spindle speed range requirement. The firm states that it has modified its machine by making a pulley adjustment to allow for a spindle low speed of 50 rpm, with a concomitant decrease in the spindle high speed. The firm has furnished this Office with a copy of its printed product literature containing a hand-written notation which states that the machine's spindle low speed has been "changed to 50." However, the Army states that the printed product literature accompanying Discount's bid was not the same as has been furnished to this Office, as the Army advises that it contained no statement that the spindle low speed had been altered.

ANALYSIS

The Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(a)(1) (1985), provides that, in order to preserve the integrity of the competitive bidding system after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid unless there is a compelling reason to reject all bids and cancel the invitation. Asbestos Abatement of America, Inc., B-221891, et al., May 7, 1986, 86-1 CPD ¶ 441. Such a compelling reason exists, however, where no responsive bid has been received from a responsible bidder. FAR, § 14.404-1(c)(6); Windet Hotel Corp., B-220987, Feb. 6, 1986, 86-1 CPD ¶ 138.

We find no merit in Discount's assertion that its bid was responsive as submitted. It is well-settled that an agency properly rejects a bid as nonresponsive where the bidder submits required descriptive literature that shows that the product it is offering does not conform to the material specifications as set forth in the IFB. Harnischfeger Corp., B-220036, Dec. 19, 1985, 85-2 CPD ¶ 689. This is because of the fundamental principles of sealed bidding that responsiveness concerns a bidder's unequivocal offer to provide supplies or services in total conformity with the material terms and conditions of the solicitation,

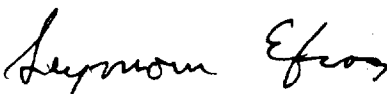
and that responsiveness must be determined on the basis of the bid as submitted. Continental Telephone of California, B-213255, Apr. 17, 1984, 84-1 CPD ¶ 428. Thus, even if the offered product in fact possesses the required features, bid rejection is required when the literature does not clearly show conformance with the requirements. Harnischfeger Corp., B-220036, supra.

Since Discount's literature submitted with its bid stated that the spindle speed range of the milling machine head was 55-4250 rpm rather than 50-3500 rpm as called for in the IFB, clear evidence of nonconformity with a material requirement, the contracting officer was compelled to reject the bid as nonresponsive. Emerson Electric Co., B-212659, Nov. 4, 1983, 83-2 CPD ¶ 529. The firm's post-bid opening explanation that it has modified its machine to decrease the spindle speed range to that specified in the IFB is of no consequence because a nonresponsive bid may not be cured by explanations offered after bids have been opened. E.I. du Pont de Nemours & Co., Inc., B-208263, Dec. 27, 1982, 82-2 CPD ¶ 578.

We find nothing in the record to contradict the Army's statement that the printed product literature Discount submitted with its bid contained no hand-written notation, as in the literature furnished to this Office, that the spindle low speed had been "changed to 50."

Under any view of the matter, Discount's bid was properly deemed to be nonresponsive because the accompanying product literature qualified its bid, that is, made it other than an unqualified promise to do the exact thing called for in the IFB. See Harnischfeger Corp., B-220036, supra; see also A.O. Stilwell Co., Inc., B-216804, Apr. 30, 1985, 85-1 CPD ¶ 486.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel