



The Comptroller General  
of the United States

Washington, D.C. 20548

Gilholly - Ph

## Decision

Matter of: Atlas Trading and Supply Company, Inc.

File: B-227164

Date: August 10, 1987

---

### DIGEST

1. Where the IFB requires that coal analysis reports published by the Department of Energy show that the characteristics of the coal produced by the bidder's mine satisfy the specification, a bid that fails to demonstrate compliance with the specification is properly rejected as nonresponsive.
2. A nonresponsive bid must be rejected and may not be changed or corrected based on explanations offered by the bidder after bid opening.
3. Contracting agency did not violate IFB's evaluation clause by failing to request a special report from the Department of Energy after bid opening to determine whether bidder's coal met specifications where clause required offerors to insure that coal had been sampled prior to submitting a bid.
4. Issue that protester could have raised in its initial submission, but did not raise until it submitted comments after a bid protest conference, is dismissed. The Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation of protest issues.
5. IFB requirement that coal analysis reports published by the Department of Energy show that the coal offered meets the specifications, is a matter of responsiveness, not responsibility.

---

### DECISION

Atlas Trading and Supply Company, Inc., protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. DLA600-87-B-0010, issued by the Defense Logistics Agency (DLA) for various types of bituminous coal for use at military and civilian locations in the midwest.

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

039707

Item 3 of the IFB was a requirement for an estimated 20,000 tons of coal for Chanute Air Force Base, Illinois. The IFB identified minimum acceptable characteristics which the coal had to meet, such as heat output expressed in British Thermal Units (BTU) and ash, sulfur and moisture content. Specifically, the IFB required the following quality:

Moisture: 16 percent maximum, 10 percent minimum  
Volatile Matter: 42 percent maximum, 38 percent minimum  
Ash: 10 percent maximum, 6 percent minimum  
BTU: 13,100 minimum  
Ash Softening Temperature (AST) 2,100  
Free Swelling Index (FSI): 5 maximum, 3 minimum

The IFB also provided, in clause M14, "Evaluation of Offers," that:

The Government will determine, based upon published and special reports issued by the United States Department of Energy, Coal Sampling and Inspection Office or the U.S. Army General Material and Petroleum Activity Laboratory, if the coal offered from the "mine" or "mines" set forth in the offer meets all the requirements of the specifications shown on the schedule. Those coal offers which do not meet the specifications and those coal offers for which there are no special or published reports will be rejected as non-responsive. It shall be incumbent upon offerors to insure that coal offered has been sampled by the United States Department of Energy, Coal Sampling and Inspection Office or the U. S. Army General Material and Petroleum Activity Laboratory prior to submitting an offer. A coal size required by the solicitation and offered for which no such reports are available will be evaluated on the nearest coal size as determined by the Government, for which reports exist.

Six bids for item 3 were submitted by the IFB's January 28, 1987, closing date. Though Atlas' bid was the lowest, DLA determined that the quality of coal bid did not meet the specifications and rejected Atlas' bid as nonresponsive. DLA reached its conclusion based on a December 30, 1986, Department of Energy (DOE) published report on coal from the mine designated in Atlas' bid. The report, which was the only published DOE report on the designated coal at the time of bid submission, showed a 16.1 percent moisture content, which exceeded the IFB's 16 percent maximum; an 11.6 percent dry ash content, which exceeded the IFB maximum of 10 percent; a 13,003 BTU value, which failed to meet the IFB's

13,100 BTU minimum, and a 36.7 percent volatile matter, which failed to meet the IFB's 38 percent minimum.

DLA awarded a contract to Lane Resources, Inc., on March 8, 1987. Atlas protested its bid rejection to DLA, and by letter dated May 11, DLA denied Atlas' protest. Atlas then protested to our Office.

Atlas contends that its bid should not have been rejected as nonresponsive because the deviations of its coal from the IFB's specifications, as shown in the December 1986 DOE report, were not material. According to Atlas, the deviations had a de minimis effect on price, and could be caused by laboratory techniques and be totally unrelated to the quality of a bidder's coal. Atlas notes that there are inherent repeatability and reproducibility problems at laboratories testing for moisture in coal. Atlas also argues that other reports published by DOE after bid opening, as well as commercial laboratory test reports, show that its coal meets the IFB's specifications. The fact that individual coal characteristics enumerated in a particular DOE report do not conform to the specifications is not significant, argues Atlas, since the reports viewed as a whole show its coal can meet the specifications.

To be responsive, a bid must reflect an unequivocal offer to provide the exact product or service called for in the solicitation so that its acceptance will bind the contractor to perform in accordance with the material terms and conditions of the IFB. Prosperity Dredging Co., Inc., B-225543, Mar. 30, 1987, 87-1 CPD ¶ 360. Any bid that is materially deficient must be rejected; a defect in a bid is material if it significantly affects price, quality, quantity or delivery. See Mountain Air Helicopters, Inc., B-223099.2, Aug. 6, 1986, 86-2 CPD ¶ 162. The materiality of an aspect of a solicitation is not diminished by the fact that there may not be a significant impact on the price of the work to be performed. See Fast Electrical Contractors, Inc., B-223823, Dec. 2, 1986, 86-2 CPD ¶ 627.

Here, the IFB listed the characteristics of the coal quality needed by particular coal burning installations. DLA reports that moisture and BTU affect coal heat content; volatile matter content affects timing of coal ignition in the burner equipment, and ash content affects both particular emissions and equipment operations, and therefore these are material aspects of the government's requirements. We have previously recognized DLA's special need to match the characteristics of the coal it procures with the particular coal burning installation, and held that DLA could properly restrict consideration to those bids where the published DOE coal analysis report indicates that the

designated mine contains coal conforming to the specification. National Energy Resources, Inc., B-206275, Feb. 1, 1983, 83-1 CPD ¶ 108. Thus, we accept DLA's finding that, based on the December 1986 DOE report, the coal offered by Atlas was materially deficient and rendered Atlas' bid nonresponsive. The responsiveness of a bid must be determined from its face at bid opening, and it may not be changed or corrected on the basis of explanations offered by the bidder after bid opening. See Master Security, Inc., B-225719 et al., Feb. 26, 1987, 87-1 CPD ¶ 226.

Atlas contends that DLA violated the IFB's Clause M14, "Evaluation of Offers" clause, by failing to request a special report to determine the ability of Atlas' coal to meet specifications. According to Atlas, the variations of its coal, as shown in the published report, were so slight as to warrant a request by DLA for a special report.

We disagree. Clause M14, which states how the government will determine if the coal offered meets specifications, requires "offerors," not DLA, "to insure that coal offered has been sampled . . . prior to submitting an offer." DLA notes that the bidder is the party most directly affected by the reports and is in the best position to effectively question the results if a mistake has been made. We have previously stated that we do not regard as unreasonable DLA's expectation that bidders will take steps to have on file appropriate analysis reports prior to bidding. See Fuel Supply Corp., B-214095, Apr. 16, 1984, 84-1 CPD ¶ 419. Therefore, we do not believe DLA was required by Clause M14 to request a special report after bid opening to determine if Atlas' coal met specifications, when an existing published report showed the coal did not meet specifications.

At the bid protest conference, Atlas raised the issue that the published DOE report relied on by DLA was not valid because it was conducted on the wrong size coal. According to Atlas, the December 30, 1986, DOE report concerned 1-1/4 by 0 inches size coal, not the 1-1/4 by 1/4 inches coal required by the IFB. Atlas states it discovered the discrepancy on January 19, 1987, and filed a new request for coal sampling form with DOE. The coal was sampled on January 22 and test results were reported on February 25. Atlas' coal was also sampled on February 4 and test results reported on March 17. Atlas argues that these reports, and other subsequent commercial laboratory reports on the right size coal, show that Atlas' coal conforms to specifications except for de minimis variations.

DLA argues that we should dismiss this protest issue both because it was not raised in Atlas' initial submission to our Office, and because it should have been raised within

10 days after Atlas became aware on January 19 that the December 86 DOE report reflected test results on the wrong size coal. In any event, contends DLA, the government's use of the December 1986 report in evaluating Atlas' coal was in accordance with IFB Clause M14(g), which stated that "a coal size required by the solicitation and offered for which no such reports are available will be evaluated on the nearest coal size as determined by the government for which reports exist." DLA argues that the December 30, 1986, report was the only report available at the time of evaluation, and its use as "the nearest coal size for which reports exist" was proper and, further, that the February and March reports indicate that Atlas' coal was noncompliant.

We will not consider Atlas' argument, first raised with our Office at the bid protest conference, that the published DOE report relied on by DLA was not valid because it was conducted on the wrong size coal. Although Atlas raised this issue in its agency-level protest, which was denied, the issue was not included in Atlas' initial protest to our Office. The protest letter merely referenced the fact that the issue had been protested to the agency and denied. A protester may not introduce a new issue in its comments that it could and should have raised in its initial submission to our Office. Our Bid Protest Regulations, 4 C.F.R. part 21, do not contemplate the unwarranted piecemeal presentation of protest issues. See MRI Mechanical Contractors, B-224170 et al., Dec. 24, 1986, 86-2 CPD ¶ 712. In any event, while Atlas disagrees with DLA's position that all 3 reports (December 30, 1986, February 25, 1987, and March 17, 1987) show that Atlas' coal is noncompliant, it has not refuted DLA's position. Atlas' only argument concerning the deviations noted in all 3 reports is that they are de minimis, and we have already concluded that the deviations are material.

Atlas also protests that its ability to deliver conforming coal was a matter of responsibility, not responsiveness, and that therefore the matter should have been referred to the Small Business Administration for consideration under Certificate of Competency procedures. Our Office has held that a bid evaluation based on DOE coal test reports is a matter of responsiveness. National Energy Resources Inc., B-206275, supra.

Atlas also asserts that acceptance of its bid would result in a savings of approximately \$30,000. However, the possibility that the government might realize a monetary

savings by waiving a material deviation in a bid does not outweigh the importance of maintaining the integrity of the competitive bidding system by rejecting nonresponsive bids. HoseCo., Inc., B-226420, Mar. 12, 1987, 87-1 CPD ¶ 282.

The protest is denied in part and dismissed in part.

*for Seymour Efra*  
Harry R. Van Cleve  
General Counsel