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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Malkin Electronics International, Ltd.

File: B-228886

Date: December 14, 1987

## DIGEST

Post-bid-opening protest filed by low bidder, who had been requested by contracting officer to verify its extremely low bid price, in which bidder alleged that solicitation was ambiguous with respect to requirement for supply of altered item is denied since, when read as a whole, solicitation clearly called for entire altered item assembly and not, as the protester contends, simply the unit required to effect the alteration.

## DECISION

Malkin Electronics International, Ltd. (Malkin), protests the award of a contract under invitation for bids (IFB) No. DAAK01-87-B-A136 issued by the Department of the Army. At issue is whether the IFB's description of one item, as to which Malkin's price was so inordinately low that it was asked to verify its bid, was ambiguous, as a result of which the protester interpreted the requirement differently from the Army. The protester asserts that of the two interpretations, it is the correct one. It seeks either award of the contract as the low, responsive bidder or cancellation of the IFB and resolicitation of the requirement. We deny the protest.

The solicitation was initially issued for a 3-year requirements contract for an estimated quantity of 144 portable bath units (line item 1) and an estimated quantity of 1170 M80 liquid-fueled water heaters "in accordance with [military specification] MIL-H-44086 and ECP [engineering change proposal] 86NE6040" (line item 4). Three weeks after the solicitation was issued, the agency issued amendment 0001 to add a requirement for an estimated quantity of 510 M85 laundry water heaters "Utilized on Laundry Unit in accordance with drawing specification 6-1-9912, altered" (line item 8) which were to be delivered over three separate

ordering periods.<sup>1/</sup> The M85 laundry heater is similar to and constructed from the M80 water heater in combination with an alteration unit.

The prices bid by Malkin for the portable bath units, line item 1, and for the M80 water heaters, line item 4, although competitive, would not result in Malkin being the low bidder. Its unit price of \$270 for the M85 laundry water heaters, line item 8, however, was but a fraction of the other eight bidders' unit prices, which ranged from approximately \$3,400 to \$4,500. When Malkin's unit price was multiplied by the total estimated quantity for line item 8, 255 units, the product was \$68,850, in comparison with the other bidders' extended prices, which were between \$875,000 and slightly more than \$1 million. As a consequence of this disparity in prices for the three line items concerning the M85 laundry water heaters, Malkin's total bid of approximately \$4,259,000 was the lowest received, and about \$1.4 million below that of the second low bidder.

Because the price bid by Malkin for the M85 laundry water heaters was so far below those bid by the other eight bidders, as well as the prior contract purchase price, the Army advised Malkin that it suspected the possibility of a mistake in bid and requested that Malkin verify its bid or provide evidence of mistake if one were claimed. Malkin's response to the Army's request for bid verification was to file a protest with our Office while simultaneously advising the contracting officer:

" . . . The Government may have expected line item 8 to describe a complete, modified version of a heating unit. Malkin, however, after reading the requirements carefully, reasonably interpreted the Solicitation to require that bidders submit a bid on line item 8 solely on the modification to the unit. Thus, Malkin's bid was for the modification only and not a complete heater assembly."

Malkin further stated in its letter to the contracting officer and in its protest that its interpretation of the requirement called for in line item 8 was based on technical drawing specification 6-1-9912 and parts list PL 6-1-9912, referenced on the drawing specification, which was also included in the technical data package to amendment 0001. The protester states that because technical drawing 6-1-9912

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<sup>1/</sup> Line items 2 and 3, 5 and 6, and 9 and 10 represent future ordering periods through September 30, 1989, for the supplies represented by line items 1, 4 and 8, respectively. Line item 7 was a data requirement.

showed the heating unit in dotted (phantom) lines and the alteration unit in solid lines, the drawing only showed the modification to the heater and not the heater itself. In support of this conclusion the protester says that in "common industry practice," solid lines indicate the part required, while "dotted" lines are used only as a point of reference to indicate, for example, where a part will be inserted or utilized. Thus, the protester states, it interpreted line item 8 of the solicitation as calling for only the unit necessary to modify the M80 heater as required to construct the M85 heater.

Malkin next states that the parts list referenced on the M85 heater technical drawing listed only the nine parts required for the alteration unit, whereas the parts list included in the solicitation for the M80 water heater (line item 4) listed in excess of 70 parts that are required to construct that entire heater assembly. The protester explains that it interpreted line item 8 of the solicitation to require only heater alteration units because, like the technical drawing for that requirement, the parts list included in the M85 laundry water heater technical data package "contained [no] reference to the production of the entire [M85] heater assembly."

Malkin further explains that it believed line item 8 of the solicitation called for M85 heater alteration units as opposed to entire heater assemblies because the IFB allows the contractor a shorter time period for completion of the first article test (180 days after issuance of the delivery order) and delivery of line item 8 than it allows for the M80 heaters (300 days). The protester reasons that the shorter first article test completion period for only the alteration unit is justified because the alteration unit is simpler to manufacture than the M80 heater, whereas it would be inconsistent for the agency to require completion of a first article for the entire M85 heater assembly (which the agency maintains the solicitation, in fact, required) within less time than is allowed to complete the first article test for the simpler M80 heater.

In its protest, Malkin takes the position that the IFB was "at best ambiguous;" that Malkin's interpretation "is the correct one;" that it therefore is entitled to award as the

low, responsive bidder;<sup>2/</sup> or, alternatively, that the entire solicitation should be canceled.

It is a well-established principle of federal procurement law that the government's specifications in a solicitation must be sufficiently definite and free from ambiguity to permit competition on a common basis. An ambiguity exists if specifications are subject to more than one reasonable interpretation. Toxicology Testing Services, Inc., B-219131.2, Oct. 28, 1985, 85-2 C.P.D. ¶ 469, at 4. While it is not necessary for the finding of an ambiguity that the interpretation of the charging party be the most reasonable one, the party is, nevertheless, required to show that its interpretation of the requirement in issue is reasonable. Wheeler Bros., Inc.; Defense Logistics Agency--Request for Reconsideration, B-214081.3, Apr. 4, 1985, 85-1 C.P.D. ¶ 388. To be reasonable, an interpretation must be consistent with the solicitation, read as a whole and in a reasonable manner. Captain Hook Trading Co., B-224013, Nov. 17, 1986, 86-2 C.P.D. ¶ 566; Martin Widerker, Engineer, B-219872 et al., Nov. 20, 1985, 85-2 C.P.D. ¶ 571 at 7. When a dispute exists as to the actual meaning of a solicitation requirement, we will resolve the dispute by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 C.P.D. ¶ 234.

Based upon our review of the record in consideration of the governing principles stated above, we conclude that when reasonably read as a whole the solicitation was not, as the protester contends, ambiguous as to the requirement called for in line item 8. It is clear from the face of amendment 0001, which added that item, and from the technical data package that the requirement was for complete heater assemblies, not the alteration units necessary to construct the heaters.

As the agency states, amendment 0001 sets forth on the first page that the purpose of the amendment was:

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<sup>2/</sup> Under its interpretation of the M85 specification requirements which it insists "is the correct one," Malkin would be obligated to supply only a component of the entire heater assembly which the government is seeking to acquire. The protester has not explained why it should be awarded a contract as to which it has, in effect, announced in advance it will perform in a manner which will not satisfy the government's needs. Malkin's responsibility remains undetermined because it has not consented to a preaward survey during the pendency of its protest.

". . . to add to this solicitation the Heater, Water, Liquid, NSN [national stock number]: 4520-01-237-3719 which is utilized to support laundry units . . . . (Emphasis added.)3/

The supplies and pricing schedule of the amendment describes item 8 as NSN: 4520-01-237-3719 a laundry heater altered in accordance with technical drawing 6-1-9912. (Emphasis added.)

A note also appears on the Schedule which states:

"a. The Government currently intends to order an initial quantity of 255 Heaters, NSN: 4520-01-237-3719 simultaneously with award of the basic contract." (Emphasis added.)

These three examples of what the amendment called for are only some the most notable references in the solicitation to the line 8 requirement for heater assemblies. Nowhere in the amendment is there language which indicates that the Army intended to procure, not M85 laundry water heaters, but only the alteration unit used to construct M85 laundry water heaters from M80 water heaters.

We now consider the information concerning the line item 8 requirement provided in the technical data package. The technical drawing (No. 6-1-9912) for the M85 laundry water heater, enclosed in the technical data package that accompanied the amendment, is identified at the lower right corner by the legends, "ALTERED ITEM DRAWING" and (in the adjacent title block):

**"HEATER, WATER, ASSY"**  
**"M85 LAUNDRY"**

The drawing shows diagrams of the M80 water heater assembly drawn in phantom lines<sup>4/</sup> and the alternate parts necessary

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<sup>3/</sup> The contracting officer advises that this national stock number is assigned to the "M85 Laundry Unit Water Heater Assembly."

<sup>4/</sup> According to the Army, under the Department of Defense Military Standard 100, Engineering Drawing Practices (DOD-STD-100C), which adopts American National Standards Institute Line Conventions and Lettering Standards, phantom lines consist of long thin dashes separated by pairs of short thin dashes, and are used to indicate, among other functional relationships, adjacent positions of related parts.

to construct the M85 laundry heater drawn in solid lines. In the upper left corner of the technical drawing appears a single note, as follows:

"NOTES

"1. Make M85 LAUNDRY WATER HEATER FROM HEATER ASSY WATER, M80, PART No. 6-1-6200, FSCM 81337."

Although the protester states that it interpreted the technical drawing and the parts list as indicating that only the alteration unit for the M85 heater was required in line item 8, the agency explains that among the legends at the lower right portion of the technical drawing is the instruction, "Interpret Drawing In Accordance with DOD-STD-100." The record indicates that both the technical drawing and the parts list were prepared in a manner consistent with the provision pertaining to "altered item drawings" set forth in DOD-STD-100, Chapter 200, Types of Engineering Drawings. The agency states, and we agree, that only by reading the technical drawing and the parts list in relative isolation and without attention to the interpretive guidance provided in DOD-STD-100 could a reasonable person conclude that only alteration units for the M85 heater were required by line item 8.

Concerning Malkin's assumption that its interpretation of the requirements of amendment 0001 was confirmed by the fact that the solicitation allowed a shorter time frame for beginning first article testing for line item 8 than for line item 4 (the M80 heater), the agency states the dates for beginning first article testing of the M80 and M85 heaters were not established on the basis of the difference in complexity of the heaters. Rather, agency production engineers established the date for beginning first article testing of the M80 so as to include the additional time necessary to prepare the technical manuals required for that item, but such additional time was not factored in for the M85 heater because manuals were not required.

It appears that the difference in the solicitation in time periods allowed for beginning first article testing on the two subject requirements seems inconsistent because, subsequent to the initial issuance of the solicitation, another requirement was added by amendment and the agency failed to adjust the first article test beginning date so as to be consistent with the date stipulated for the initial requirement. We do not believe, however, that this omission resulted in the solicitation having a latent ambiguity in light of the provisions contained in the whole solicitation. Rather, it was an apparent inconsistency which logically should have been recognized to be a result of the subsequently added requirement. As such, if there was any

ambiguity, it was a patent ambiguity which the protester should have raised prior to bid opening. See Wheeler Bros., Inc., et al.--Request for Reconsideration, B-214081.3, supra, at 10.

The protest is denied.

*for* *James F. Hinchman*  
James F. Hinchman  
General Counsel