



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Houston Helicopters, Inc.
File: B-231122
Date: August 15, 1988

DIGEST

When a solicitation provision requiring bidders to submit make and model numbers of the helicopters offered is not intended to demonstrate bidders' conformance with specifications, the information does not relate to bid responsiveness. Rather, this information concerns how bidders will perform and as such, is a matter of responsibility. Thus, bidders may properly submit the information after bid opening.

DECISION

Houston Helicopters, Inc., protests the rejection of its bid as nonresponsive by the Forest Service, U.S. Department of Agriculture, under invitation for bids (IFB) No. 49-88-02 for helicopter services at four bases designated by the agency.

We sustain the protest.

The solicitation contained four items, one helicopter for each of the four bases. The schedule of items contained various size and performance requirements, and required bidders to indicate, at paragraph "G" of the item, the make, model and series of the helicopter being bid. Bidders were also to indicate their bid price at paragraph "M" of each item.

The number of days and estimated hours varied for each item. The hourly flight rates were specified according to make and model of helicopter in section "J" of the IFB. Houston submitted the lowest bid on two items, but it did not complete paragraph "G," stating the make, model and series of the helicopters it intended to provide for the item. The Forest Service rejected the bid as nonresponsive, and informed Houston that because the make, model and series information had been omitted, the Forest Service could not determine what helicopters Houston intended to furnish.

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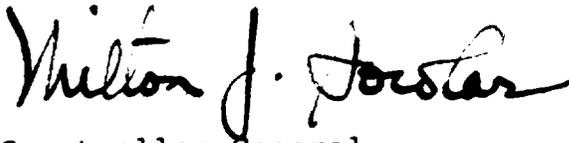
Houston protested to our Office, stating that its failure to include the make, model and series information was an immaterial clerical oversight. Houston argues that the performance requirements listed in the solicitation established that Houston could meet the requirements and thus indication of the type of helicopter used was not necessary. The Forest Service disagrees, stating that it requested the make, model and series information because the performance requirements alone do not indicate which helicopter is being offered, and not all helicopters will meet the IFB's requirements.

Where a contracting agency requests descriptive literature or the make and model number of equipment so that it can determine exactly what the bidder proposes to furnish, it may, in appropriate circumstances, reject as nonresponsive a bid that does not include this information. In such a case, the solicitation must clearly indicate that this information will be considered part of a bid, that it must be submitted with the bid, and that the failure to submit the information or literature demonstrating product conformance at bid opening will result in the rejection of the bid. Federal Acquisition Regulation (FAR) § 14.202-5; Colt Industries, B-218834.2, Sept. 11, 1985, 85-2 CPD ¶ 284.

The solicitation did not do so here. Moreover, notwithstanding the agency's statements to the contrary, it does not appear that the Forest Service needed the make and model information at the time of bid opening to ascertain whether the helicopter offered conformed to the specifications. The solicitation contained detailed specifications which the protester would be bound to meet if awarded the contract. Moreover, while the Forest Service ordinarily would need this information to evaluate bid prices, which were based on the daily availability rate plus the flight rate (the latter being determined by the make and model of the helicopter offered), Houston, although not required to do so, completed section 2 of paragraph M, indicating a flight rate of \$482 per hour. From the tables included in the solicitation, the \$482 rate applies to either the Bell 212 or the Bell 222A helicopter. Although the Forest Service states that only the Bell 212 satisfies the solicitation's requirements, the agency did have enough information to evaluate Houston's bid price. Since Houston's ability to perform the contract in accordance with the specifications is a matter of responsibility, the agency could determine anytime prior to award whether Houston intended to provide the Bell 212. See The ARO Corp., B-222486, June 25, 1986, 86-2 CPD ¶ 6.

We, therefore, find that the Forest Service improperly rejected Houston's bid as nonresponsive, and recommend that the contract awarded to ERA Helicopters, Inc., be terminated for the convenience of the government and award be made to Houston as the low responsive bidder, if Houston is found to be responsible and eligible for award. In addition, we find Houston entitled to recover its reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R § 21.6(d) (1988). Houston should submit its claim for such costs directly to the Forest Service.

The protest is sustained.

for 
Comptroller General
of the United States