



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Platt & Son, Inc.

File: B-232661

Date: December 27, 1988

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### DIGEST

1. Protest alleging a defect in specifications, filed after the protester's bid was rejected as nonresponsive, is untimely because, under the General Accounting Office Bid Protest Regulations, protests of alleged improprieties in a solicitation which are apparent prior to bid opening are required to be filed before bid opening.
2. Where a bidder states that it intends to provide a product that will not meet the solicitation's specifications and provides nonconforming samples for evaluation, the contracting officer properly rejected the bid.

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### DECISION

Platt & Son, Inc., protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DLA500-87-B-0273, a total small business set-aside issued by the Defense Industrial Supply Center (DISC), Philadelphia, Pennsylvania, for 640 multiple leg steel slings. Platt contends that the IFB's specification is defective and cannot be met; that the rejection of its bid was based on a specification that was not cited in the IFB; and that DISC should not have lifted the "stop work" order that was issued to H.V. McCartney Enterprises, Inc., the firm to which award was made under the IFB.

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

Issued on December 4, 1986, the IFB required class 2 multiple leg steel slings with terminal attachments manufactured in accordance with basic military specification MIL-S-52432, which sets forth the strength and dimensional requirements for the slings. The basic specification incorporated federal specification RR-C-271 for application to chains and attachments. The slings were required to have two welded chain link legs and forged coupling (or

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connecting) links at each end. The coupling links were to be attached to a round lifting ring at the upper end and terminal fittings (such as a hoist, slip or drum hook) at the lower end. This protest involves the requirement for a forged coupling link with a 3/4-inch diameter and a 1/2-inch chain.

Bids were opened on January 6, 1987. Platt's bid of \$210 per sling was lowest. McCartney, the third low bidder at \$271.36 per sling, protested any prospective contract award to either Platt or the second low bidder, Carolina Chain & Cable Co., contending that it had submitted the best possible price and that the lower bids of both Platt and Carolina must have omitted something material, such as the required type of alloy or plating. As a result of a post-bid opening inquiry conducted by the contracting officer in response to McCartney's protest, Carolina's bid was rejected as nonresponsive to the IFB's small business set-aside requirements, and Platt's bid was rejected as nonresponsive because 21/32-inch, rather than the required 3/4-inch, coupling links were offered.

After determining that McCartney's offered slings would conform to the specifications, the contracting officer awarded the contract to that firm on January 20, 1988. By letter of January 29, Platt protested the rejection of its bid as nonresponsive, contending that it offered a 21/32-inch coupling link because a 3/4-inch coupling link cannot fit into a 1/2-inch chain as required by the specifications. In response, the contracting officer issued a "stop work" order to McCartney pending the outcome of a technical evaluation of Platt's contention and examination of component samples provided by Platt.

The technical evaluation indicated that although Platt's offered sling parts could not meet the specification's size requirements, the components of other manufacturers could meet the requirements.<sup>1/</sup> The agency noted that Platt's bid was also unacceptable because it offered welded links rather than the forged links that are required by the specification. The agency also examined supplier quotations used by McCartney in its bid and reaffirmed that all components to be used in the slings offered by McCartney would conform to the specifications. Accordingly, on August 19, the contracting officer denied Platt's agency-level protest.

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<sup>1/</sup> The technical evaluation referred to specification MIL-S-52432A, dated July 26, 1985, which superseded MIL-S-52432, dated July 19, 1965, the version of the specification cited in the IFB.

Platt protests to our Office that the specification is defective because the required coupling link with a 3/4-inch diameter is too large for the 1/2-inch chain. Under our Bid Protest Regulations, protests of alleged improprieties in a solicitation which are apparent prior to bid opening are required to be filed before bid opening. 4 C.F.R. § 21.2(a)(1) (1988). While the protester claims that it did not know of the defect until after bid opening, the required dimensions for the chain and coupling link were clearly spelled out in the specification. Therefore, because Platt's protest was filed only after its bid was rejected as nonresponsive, well after the bid opening date, this portion of the protest is dismissed as untimely.

Platt also contends that the agency improperly evaluated its bid on the basis of revision A to the basic specification (MIL-S-52432A) even though the IFB included only the basic specification (MIL-S-52432). In this regard, DISC explains that the repeated references to the revised specification in the record resulted from an erroneous reference to the most current version of the specification by a technical employee, which error was inadvertently repeated by the contracting officer in his letter to Platt denying the firm's agency-level protest. DISC maintains that, notwithstanding references to revision A, the evaluation of bids and contract award was in accordance with the basic specification, as set forth in the IFB.

Revision A relaxed the strength and dimensional requirements of the basic specification in several respects. However, the record indicates that both versions of the specification require 1/2-inch chains with 3/4-inch coupling links. Platt's bid, therefore, would have been rejected under either version of the specification. As a result, Platt was not prejudiced by the contracting officer's erroneous reference to revision A rather than the basic specification, because both versions of the specification required a 3/4-inch coupling link, and the post-bid opening inquiry established that Platt did not intend to provide a product that conformed to that requirement.

With regard to Platt's contention that DISC should not have lifted the "stop work" order, we note that DISC was not required to suspend performance during the pendency of this protest because Platt's protest was not filed within 10 calendar days of contract award. The contract was awarded to McCartney on January 20, 1988, and Platt did not file its protest with our Office until September 19. Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(1) (Supp IV 1986), the suspension of contract

performance is required only where the contracting agency receives notice of a protest from our Office within 10 calendar days of contract award.

The protest is dismissed in part and denied in part.

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