

5) COACHMAN



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: BMSI, Inc.
File: B-237402
Date: November 2, 1989

DIGEST

1. The General Accounting Office does not consider challenges of the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act.
2. Post bid opening explanation that a bidder intended to offer a different complying model, rather than the nonresponsive model which it did offer, cannot be accepted to render the bid responsive.

DECISION

BMSI, Inc., protests the award of contract to Hunt Finishing Systems under invitation for bids (IFB) No. DAAC79-89-B-0090, issued by the Army Materiel Command for a spray paint booth at Red River Army Depot.

We dismiss the protest under our Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1989), for failure to state a valid basis for protest.

BMSI questions whether Hunt is a manufacturer and alleges that Hunt subcontracts all of its fabrication. Our Office does not consider protests challenging the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act. 4 C.F.R. § 21.3(m)(9).

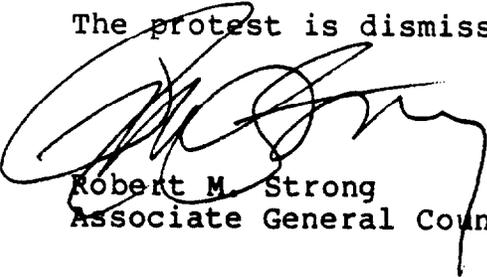
BMSI also contends that since its bid is \$7,000 less than Hunt's it is not in the government's interest to reject BMSI's bid because of a clerical error. In this connection BMSI contends that it specified the wrong model in its bid, but that and it really meant to identify another model listed on the same page of its descriptive literature. The IFB called for a drive through type of paint booth with doors at both ends. BMSI's bid was rejected as nonresponsive because the model paint booth which BMSI specified had only one door.

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To be responsive, a bid must reflect an unequivocal offer to provide the exact item or service called for in the IFB so that acceptance of the bid will bind the contractor to perform strictly in accordance with the IFB's material terms and conditions. Handyman Exchange, Inc., B-224188, Jan. 7, 1987, 87-1 CPD ¶ 23. Responsiveness must be determined as of the time of bid opening and, in general, solely from the face of the bid and materials submitted with the bid. Id. Any bid which is materially deficient in this respect must be rejected. Inscom Elec. Corp., B-225858, Feb. 10, 1987, 87-1 CPD ¶ 147. A defect in a bid is material if it affects price, quality, quantity or delivery. Id. In this case, BMSI offered a model which it concedes did not conform to the material requirements of the solicitation, as was evident from BMSI's enclosed descriptive literature. BMSI cannot make its bid responsive by claiming it made a clerical error in its model reference as such post-bid opening explanations may not be accepted to make a bid, which was clearly nonresponsive, responsive. Handyman Exchange, Inc., B-224188, supra. Accordingly, BMSI's bid was properly rejected as nonresponsive.

BMSI also complains that it was not informed of an award in a timely fashion and it was incorrectly informed who the awardee was, although it now knows that award was made to Hunt. While agencies are required to provide prompt notice of contract awards, we generally view delay in notifying unsuccessful offerors as a procedural defect that does not affect the validity of contract award. Syllor, Inc. and Ease Chemical, B-234723; B-234724, June 6, 1989, 89-1 CPD ¶ 530. In any event, since we have found that BMSI's bid was properly rejected as nonresponsive, it was not harmed by the delay. Id.

The protest is dismissed.


Robert M. Strong
Associate General Counsel