



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hagglunds Prinoth

File: B-238244

Date: April 12, 1990

Marcus B. Slater, Jr., Esq., Fort & Schlefer, for the protester.

Allen W. Smith, Department of Agriculture, for the agency. Christina Sklarew, Esq.; Andrew T. Pogany, Esq.; and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where cover letter and descriptive literature render bid ambiguous with respect to compliance with solicitation specifications, bid is nonresponsive and must be rejected.

DECISION

Hagglunds Prinoth (Prinoth) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. R5-90-07, issued by the Forest Service, Department of Agriculture. We deny the protest.

The solicitation was for four oversnow tracked vehicles to be used in National Forests for transporting personnel, maintaining snowmobile trail facilities, and other winter work. The IFB required that bids offer "the latest model and one in regular production by the manufacturer at the time of delivery," and stated that descriptive literature should be furnished with the bid.

Prinoth submitted its bid with a cover letter and a brochure describing its T2 model. The bid itself did not include any model number. The cover letter stated that "with the exception of the following items, the Prinoth T2 vehicle meets the bid specifications as written." The exceptions that followed involved the engine, fuel system, tracks, and blade. For the engine, the IFB had required a minimum of 150 horsepower, while the Prinoth T2 has a 144 horse power engine; the letter noted, "[b]y virtue of the low weight of the Prinoth T2, the power-to-weight ratio meets or exceeds the bid specifications." For the tracks, the IFB required

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steel; the T2 tracks are of aluminum alloy. The letter noted that "[t]he many applications of the T2 . . . have proven the durability of the track." For the blade, the letter noted that although the standard blade was not wide enough to meet the specifications, Prinoth was willing to increase the width to meet the agency's requirement at no additional cost. For the fuel capacity, the IFB required a fuel tank with sufficient capacity to provide at least 8 hours of continuous use; Prinoth's letter noted that although its standard fuel tank would only provide for 4.26 hours of continuous use, the bid price included an additional tank, which doubled the fuel capacity and thus met the requirement. Prinoth's letter concluded with the statement that "[i]t is our intention to meet the requirements as set forth in your bid solicitation."

The Forest Service determined that Prinoth's bid took exception to the requirements regarding the engine and the tracks, and rejected Prinoth's low bid as nonresponsive. Prinoth protested the rejection of its bid to the agency, arguing that it was not, in fact, offering the T2 model described in its literature, and that the brochures and the explanation in its letter of how this standard vehicle differed from the vehicle offered in its bid were provided for informational purposes only. The protester asserted that the purpose of its cover letter, in discussing the four areas of apparent noncompliance of the standard T2, was "simply to assure [the agency] that our bid was to provide vehicles conforming to your specifications, modifying the standard vehicles where necessary to meet the specifications." Prinoth contended that its assurance that it intended to meet the specifications was an unequivocal promise to comply with the IFB requirements. The agency denied the protest, and this protest followed.

To be responsive, a bid must represent an unequivocal offer to provide the exact thing called for in the IFB, such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Where a bidder provides information with its bid that reduces, limits, or modifies a solicitation requirement, the bid must be rejected as nonresponsive. Oscar Vision Sys., Inc., B-232289, Nov. 7, 1988, 88-2 CPD ¶ 450. Where descriptive literature accompanying a bid is at best ambiguous with respect to the IFB's specifications, the bid is nonresponsive and cannot be accepted. See Yale Materials Handling Corp., B-228974.2, Dec. 3, 1987, 87-2 CPD ¶ 550.

We are not persuaded that Prinoth's bid represented an unequivocal offer to provide the oversnow tracked vehicles that the IFB required. In our view, it is reasonable to

interpret Prinoth's cover letter to mean that the protester believed the T2 would meet the agency's needs even though its engine and track material did not precisely meet the technical specifications. The letter explained the protester's intent to modify the fuel capacity and blade, but did not propose any modification for the other two qualified items, which could reasonably be interpreted as indicating that these were being offered without modification. For example, in its explanation of the engine's power-to-weight ratio, Prinoth asserted that its under-powered engine functionally "meets or exceeds the bid specifications," and for the aluminum tracks, Prinoth noted only their "proven durability." We therefore find that it was reasonable for the agency to conclude that the protester was offering its standard model, modified only in the ways that it specified in the cover letter to the bid. Because the information supplied was subject to two interpretations, under one of which the bid was nonresponsive, the bid was properly rejected.

Prinoth also argues that its bid was responsive because it included the promise to meet the requirements as set forth in the specifications.^{1/} Such a blanket statement of compliance contained in a bid which is otherwise noncompliant with a material requirement is not sufficient to make the bid responsive. See JoaQuin Mfg. Corp., B-228515, Jan. 11, 1988, 88-1 CPD ¶ 15. We point out, in addition, that to the extent the protester is arguing that it intended to customize its standard vehicle to comply with the specifications, the solicitation required the vehicle to be one in regular production.

The protest is denied.



James F. Hinchman
General Counsel

for

^{1/} In support of this argument, the protester cites our decision in Millipore Corp., B-234979, July 11, 1989, 89-2 CPD ¶ 31. However, in Millipore, unlike here, the cover letter not only expressly stated that the product identified by its model number conformed to the technical requirements, not merely an overall offer to comply, but it also was clear that the descriptive literature was submitted for informational purposes only with no indication of an intent to qualify the bid.