



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: G.S. Link & Associates

File: B-238600

Date: May 16, 1990

G.S. Link, for the protester.
Stuart M. Foss, Esq., and Kerry L. Miller, Esq., Office of the General Counsel, United States Government Printing Office, for the agency.
Anne B. Perry, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's bid was properly rejected as nonresponsive where protester took exception in its bid to a material solicitation requirement that paper products to be furnished contain a minimum of 50 percent waste paper.
2. Protest alleging specification impropriety apparent on the face of the solicitation, that minimum waste paper content requirement for paper product being purchased is ambiguous, is untimely when not filed prior to bid opening.

DECISION

G.S. Link & Associates protests the rejection of its bid under invitation for bids (IFB) No. 2466-M, issued by the United States Government Printing Office (GPO) for a multiple award contract relating to the printing and publication of certain Department of the Navy technical manuals. The agency rejected Link's bid because it took exception to the solicitation requirement that the paper products to be furnished contain a minimum of 50 percent wastepaper (recovered/recycled materials).

We deny the protest.

In response to the solicitation, issued on December 18, 1989, 29 firms, including Link, submitted bids by the time of bid opening on January 18, 1990. The solicitation required that the contract be performed using paper with at least a 50 percent waste paper content. This requirement

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is the GPO's implementation of the Environmental Protection Agency's (EPA) Guidelines, dated June 22, 1988, 53 Fed. Reg. 23,546 (1988), which implements the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 (1982). The solicitation advised that "[o]fferors must certify to at least the minimum percentage of waste paper content of white offset paper that will be supplied under this contract. **Offerors failing to certify to the minimum percentage content for these papers shall be determined nonresponsive.** [Emphasis added.]"

On the first page of its bid, Link inserted the following statement: "In accepting this bid, GPO agrees that no waste paper will be used in this contract. All paper will be new stock meeting all requirements of 40 C.F.R. § 250."^{1/} By a letter dated January 26, the GPO notified Link that its bid was determined to be nonresponsive. Link filed a protest in our Office on February 13, alleging that it was misled by the technical language of GPO's solicitation, and that in the past GPO rejected as nonresponsive Link's bids which promised to supply waste paper.

A bid is responsive only if a bidder has unequivocally offered to provide the requested items or services in total conformance with the requirements specified in the IFB. Power Ten, Inc., B-236725, Dec. 18, 1989, 89-2 CPD ¶ 563: Where a bidder qualifies its bid to protect itself or reserves rights which are inconsistent with a material provision of the IFB, the bid must be rejected as nonresponsive. Id. A qualification in a bid is material if it affects price, quality, quantity or delivery or the legal rights of the government. Id.

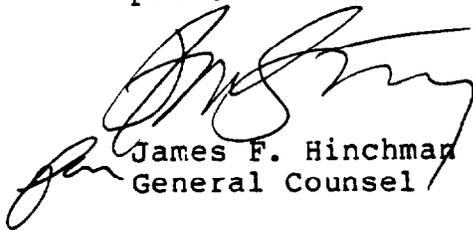
We find that the solicitation was explicitly clear that paper products furnished in response to the solicitation were required to contain a minimum of 50 percent waste paper. The agency considers this to be a material solicitation requirement because paper containing recycled materials is generally more costly than non-recycled, "virgin" paper. Link admittedly took exception to the requirement by submitting a bid which conditioned its acceptance on the GPO's agreement that no waste paper would be used in any resulting contract and, therefore, is nonresponsive. This remains true notwithstanding the following inconsistent statement made in Link's bid that it

^{1/} 40 C.F.R. § 250 (1989) codifies the EPA's guidelines. Under these guidelines, the EPA recommends that printing paper contain a minimum of 50 percent recycled materials. 40 C.F.R. § 250.21.

would comply with the EPA's guidelines, because this, at best, created an ambiguity as to what Link intended to offer. Where a bid is ambiguous as to a material requirement, such as the waste paper content, it is nonresponsive. See Johnson Controls, Inc., B-235517, Aug. 25, 1989, 89-2 CPD ¶ 177.

To the extent that Link is arguing that the solicitation was ambiguous or that the requirement for the use of waste paper as defined in the solicitation is improper, the protest is untimely. Our Bid Protest Regulations require that a protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1989). Here, Link's objection to the language of the solicitation concerns alleged solicitation improprieties apparent from the face of the solicitation. However, Link did not protest these issues until after the bid opening date and, accordingly, these grounds of protest are dismissed as untimely. American Management Enters., Inc., B-238134, Feb. 26, 1990, 90-1 CPD ¶ 234. In any event, we have recently considered the propriety of the same requirement that offerors certify that they will use paper with at least a 50 percent recovered material fiber content, and concluded that the requirement constitutes an appropriate implementation of the EPA guideline. Id.

Accordingly, the protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel