



Comptroller General
of the United States

Washington, D.C. 20548

J. Cunningham

Decision

Matter of: Ashland Scissors, Inc.

File: B-240930.2

Date: January 30, 1991

William E. Hughes III, Esq., Whyte & Hirschboeck, S.C., for the protester.

D. Joe Smith, Esq., Jenner & Block, for Clauss Cutlery Company; Wayne J. West, for Heritage Cutlery, interested parties.

Roger D. Waldron, General Services Administration, for the agency.

James M. Cunningham, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Low bid was properly rejected as nonresponsive where the contracting agency reasonably determined that bid samples required as part of the bid did not conform with stated workmanship requirements under the solicitation.

DECISION

Ashland Scissors, Inc. protests the rejection of its low bid for item 1, a guaranteed minimum of 102,283 pairs of scissors ("shears, straight trimmers"), under invitation for bids (IFB) No. FCEP-AY-900079-S-8-16-90, issued by the General Services Administration (GSA). GSA rejected Ashland's bid because the company's required bid sample was found to be nonconforming to the applicable Federal Specification, No. GGG-S-278.

We deny the protest.

The IFB required bidders to submit two bid samples of the scissors for GSA's evaluation. The IFB's "Bid Samples" clause (Federal Acquisition Regulation § 52.214-20) required that the bid samples be submitted by bid opening as part of the bid, and stated that failure of the bid samples to comply with the "required characteristics" for the scissors would require rejection of the bid. The IFB further provided in a "Bid Samples Requirements" clause that the bid samples would be "evaluated to determine compliance with all [applicable] characteristics" and that the samples' "subjective

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characteristics" would be evaluated "for those visually determinable workmanship characteristics spelled out in . . . [the] GSA purchase description [for the item] or those characteristics spelled out in paragraph 3.11 of Federal Specification GGG-S-278 as applicable."

Six bids, including one from Ashland, were received on August 16, 1990, for item 1. On August 29, 1990, GSA conducted an evaluation of Ashland's bid samples which accompanied its low bid. Since there were no workmanship characteristics set forth in GSA's purchase description of the item, GSA's evaluation of the bid samples was based on the characteristics set forth in paragraph 3.11 of Federal Specification GGG-S-278. These workmanship requirements stated that the scissors be "smoothly and fully finished with no rough or irregular edges" as well as be "free of any other defects which . . . might impair [their] serviceability"

GSA's evaluators found that Ashland's samples had sharp and irregular edges on the bases of the screws and sharp surfaces on the non-cutting edges of the blades of the scissors. Based on these findings, GSA informed Ashland that the company's samples did not comply with paragraph 3.11 of the Federal Specification and rejected Ashland's bid as nonresponsive.

Ashland first contends that its bid samples should have been acceptable since Ashland has a 1989 GSA contract for scissors under which the company has delivered over 344,000 pairs of acceptable scissors. Ashland also states that the bid samples which it furnished under this IFB were taken from a group of scissors which a GSA quality assurance inspector had previously found entirely acceptable under the company's 1989 contract. Ashland argues that these prior GSA acceptances of Ashland's scissors constitute evidence of the acceptability of its bid samples under this IFB.

We have previously considered and rejected a similar argument by a bidder whose bid samples had been rejected by GSA. As we said in Patton Elec. Co., Inc., B-194565, Aug. 27, 1979, 79-2 CPD ¶ 154:

"Even the erroneous acceptance of nonconforming items on prior contracts does not bind the procuring activity to accept nonconforming items under a subsequent contract (Lasko Metal Prods., Inc., B-182931, August 6, 1975, 75-2 CPD ¶ 86); to hold otherwise would require the Government to be forever bound by prior erroneous decisions."

Consequently, we deny this ground of protest since each procurement is a separate transaction and the fact that a product may have been found acceptable under one procurement does not affect the rejection of a nonresponsive bid under a current procurement. JoaQuin Mfg. Corp., B-228515, Jan. 11, 1988, 88-1 CPD ¶ 15.

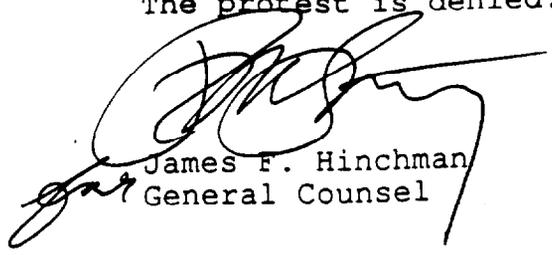
Next, Ashland argues that GSA improperly rejected its bid samples for manually determinable defects, contrary to the Bid Sample Requirements clause, which Ashland interprets as providing for rejection of bid samples only for visually determinable defects. The IFB's "Bid Sample Requirements" clause provides for a visual examination of bid samples only when workmanship characteristics are "spelled out" in the GSA purchase description for the items. However, GSA's description for item 1 did not include workmanship characteristics. Instead, workmanship characteristics were found only in paragraph 3.11 of the incorporated Federal Specification, which does not limit the inspection of bid samples to a visual examination. Consequently, GSA could properly use any appropriate method to determine the bid samples' compliance, including manual examination of the bid samples. In any event, we agree with GSA's assertion that "rough or irregular edges" are visually determinable on Ashland's bid samples.

The submission of a noncompliant bid sample renders a bid nonresponsive where, as here, the IFB informs bidders of the characteristics for which the sample would be examined, requires submission of the samples as part of the bid, and cautions bidders that a bid will be rejected if the samples are noncompliant. See ATD-American Co., B-227134, July, 17, 1987, 87-2 CPD ¶ 58. Bid samples may be rejected for inferior "workmanship" where the word "workmanship" is defined for all prospective bidders as was done here, and the contracting agency reasonably finds the bid samples to be noncompliant with the definition. See Patton Elec. Co., Inc., B-194565, supra.

We have examined Ashland's bid samples, and we conclude that GSA reasonably found them to be noncompliant with the requirements that the scissors be smooth and "fully finished with no rough or irregular edges." Specifically, the base edges of the scissors' screws do contain sharp and irregular edges and the noncutting surfaces of Ashland's scissors are also irregular and sharp. Accordingly, we find that GSA reasonably determined that Ashland's bid samples did not

comply with the IFB workmanship requirements, and Ashland's low bid was properly rejected as nonresponsive.

The protest is denied.

A large, stylized handwritten signature in black ink, appearing to read 'J. Hinchman', is written over the typed name and title.

James F. Hinchman
General Counsel