



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** American Material Handling, Inc.

**File:** B-254092

**Date:** November 16, 1993

A. Sid Goss for the protester.  
Christy L. Gherlein, Esq., General Services Administration,  
for the agency.  
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

A company may not change an offer submitted in its own name after the closing date to make itself only the agent of other companies whose products are being offered since an award to an entity other than that named in the original offer is improper.

### DECISION

American Material Handling, Inc. protests the rejection of its proposal under request for proposals (RFP) No. 7FXI-E5-92-3904-1, issued by the General Services Administration (GSA), for a variety of material handling equipment. American asserts that its proposal was submitted by American as an authorized agent of both Prime Mover Corporation, and Komatsu Forklift U.S.A. GSA rejected American's proposal because the proposal was not in the name of the principals as required by applicable regulations. American argues that this deficiency should be correctable.

We deny the protest.

American's proposal offered the brand name equipment of both Prime Mover and Komatsu on a Standard Form (SF) 33. On page No. 1 of the form in the space reserved for the name and address of the offeror, American's proposal contained American's name, address, and the president's name. The proposal was signed by the same individual identified as the president of American. In addition to the foregoing, the proposal contained American's address as the place for contract remittance, the taxpayer identification number of American, a negative contingent fee representation, and a

certification that American was acting as a regular dealer under the Walsh-Healey Act, 41 U.S.C. § 35-45 (1988).<sup>1</sup> The only place in American's proposal that suggested that American might be acting as an agent for the equipment manufacturers was in the "Discount Schedule and Marketing Data" (DSMD) section, where American identified its "marketing category" as a "manufacturer's representative." However, in the blank right next to this designation American identified itself as a "dealer selling direct to the government" and further down on this form it reiterated that American was the offeror.

In light of the apparent ambiguity in American's DSMD, GSA requested American to clarify whether it was a regular dealer under the Walsh-Healey Act. In response, American provided GSA with letters from both Komatsu and Prime Mover, which indicated that American was the authorized agent for these companies. In addition, American informed GSA that it did not stock the proposed items and thus could not be considered a regular dealer. See Federal Acquisition Regulation (FAR) § 22.606-2. Based upon this information, GSA rejected American's proposal pursuant to FAR § 22.607, which only allows the government to accept an offer from a regular dealer or manufacturer submitted by an authorized agent if the agency was disclosed, and the agent acts and contracts in the name of the principal.

American essentially asserts that since its proposal mentioned that it was acting as an agent for the principal manufacturers that it should be permitted to correct its proposal to clearly designate this relationship. We have recently denied several American protests involving the rejection of American's proposals by the Defense Logistics Agency where the firm also attempted to modify its proposals so that they would be in the name of the principal manufacturers. See American Material Handling, B-253818; B-253819, Oct. 26, 1993, 93-2 CPD ¶ \_\_\_\_; American Material Handling, Inc., B-252968; B-253205, Aug. 10, 1993, 93-2 CPD ¶ 89. As explained in those decisions, American is essentially seeking the opportunity to submit a new offer, substituting its principals for itself as the offeror. Such a substitution of one firm for another as offeror is not allowed because of the need to avoid offers from irresponsible parties whose offers could be avoided or ratified by the real principals as their interests might dictate. Id. We find no reason to reach a different result here. Once American submitted its offer in its own name, it

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<sup>1</sup>The Walsh-Healey Act requires that all contracts for the manufacture or furnishing of materials, supplies, articles, and equipment, in any amount exceeding \$10,000, shall be with manufacturers or regular dealers.

could not change the offer after the closing date to substitute another entity as the real party in interest.

The protest is denied.



*/s/* James F. Hinchman  
General Counsel