



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AMSCO Scientific

File: B-255313

Date: February 15, 1994

Matthew S. Perlman, Esq., and Craig S. King, Esq., Arent, Fox, Kintner, Plotkin & Kahn, for the protester.
Jack B. Kindt, Girton Manufacturing Co., Inc., an interested party.

Mike Colvin, Esq., Department of Health and Human Services, for the agency.

Daniel I. Gordon, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected bid as nonresponsive where descriptive literature submitted with the bid raised doubt about whether the product offered conformed to the specifications.

DECISION

AMSCO Scientific protests the rejection of its bid under invitation for bids (IFB) No. 263-93-B(BN)-0086, issued by the National Institutes of Health (NIH), Department of Health and Human Services. AMSCO contends that the agency improperly rejected its bid as nonresponsive.

We deny the protest.

NIH issued the solicitation for specialized cage washers on August 17, 1993. The IFB calls for bids for one each of two different kinds of washers, referred to as a cage and rack washer and a tunnel cage washer. The IFB required bidders to:

"furnish with their bid rough-in drawings of the cage and rack washer (and tunnel cage washer) illustrating overall dimensions, utility requirements including locations and location of washer at installation site."

The IFB stated that descriptive literature "must be furnished as part of the bid."

Four bids, including AMSCO's, were submitted by bid opening on September 17. After the agency found the low bid nonresponsive on grounds not relevant here, it reviewed AMSCO's bid of \$276,660, which was next low, for responsiveness. For the reasons set forth below, the agency found AMSCO's bid nonresponsive, and awarded a contract on September 30 to the next low bidder, Girton Manufacturing Co., Inc., for \$289,354.

The agency concluded that AMSCO's bid was nonresponsive for two reasons. First, AMSCO had not submitted drawings showing the location of the two washers at the installation site. Second, the drawings that AMSCO did submit (of the washers themselves, rather than of their location at the installation site) were each labeled with a model number different from the specification number listed in the typed narrative description of the washer. The agency concluded that it was "impossible to determine which models were going to be provided," and that "the bid as submitted was fatally ambiguous."

During the course of the protest proceedings, other instances of alleged nonresponsiveness in AMSCO's bid were raised. The agency advised our Office that it had not reviewed the details of AMSCO's bid earlier, because it believed that the failure to submit location drawings and the mismatch of model numbers required rejection of the bid. We conclude that these other areas establish the bid's nonresponsiveness.

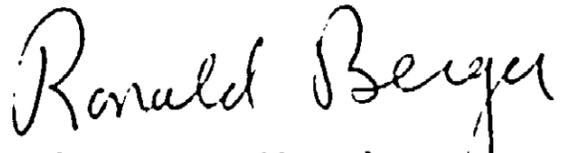
The test for responsiveness is whether a bid as submitted represents an unequivocal offer to provide the requested supplies or services at a firm, fixed price. Haz-Tad, Inc. et al., 68 Comp. Gen. 92 (1988), 88-2 CPD ¶ 486. Where descriptive literature is required by a solicitation to establish the bidder's conformance to the specifications, and bidders are so cautioned, a bid is nonresponsive if the literature submitted fails to show that the offered equipment conforms to the specifications in the areas for which the literature was requested, or shows that the equipment otherwise does not comply with the specifications. TIMCO Elec. Power & Controls, Inc., B-248308, Aug. 6, 1992, 92-2 CPD ¶ 84. Where the descriptive literature is subject to more than one interpretation, one of which would mean that the product offered does not clearly conform to the specifications, the bid is ambiguous and therefore nonresponsive. Yale Materials Handling Corp., B-250208, Nov. 20, 1992, 92-2 CPD ¶ 360.

Here, AMSCO's drawings indicate inconsistencies with AMSCO's printed specifications as well as noncompliance with several solicitation specifications. The most significant instance of the latter is a "note" on AMSCO's tunnel cage washer

drawing which states, "Customer to provide dampers in exhaust line to maintain exhaust rate at machine." The agency views the note as an instance of the bidder taking exception to the IFB specification requirement that the washer connect to the existing ventilation system without modifications. The protester does not deny that this is a material requirement of the solicitation.

While AMSCO denies that the note is inconsistent with the IFB specifications, the protester has offered no explanation which could reconcile the contractor's requiring the agency to provide dampers in the exhaust line with the specification requirement that the installed washer connect to the "existing building ventilation system."¹ The agency could reasonably view the note as improperly requiring the agency to modify the existing ventilation system. Accordingly, we view the bid as, at best, ambiguous in this regard. Because AMSCO's bid was ambiguous as to whether the product offered would satisfy what appears to be a material specification requirement, the agency properly rejected the bid as nonresponsive.

The protest is denied.

for 
 Robert P. Murphy
 Acting General Counsel

¹In addition, while the IFB specifications require one alkaline/acid reservoir and AMSCO's printed specifications refer repeatedly to one such reservoir, AMSCO's drawing shows two separate reservoirs, one for alkaline detergent and the other for acid detergent. Because the note regarding the ventilation renders AMSCO's bid nonresponsive, we need not address this and the other instances in which the agency contends the bid was ambiguous or inconsistent with the IFB specifications.