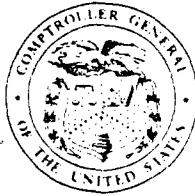


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-182995

DATE: September 24, 1975

MATTER OF: Hyster Company

57039

97427

DIGEST:

1. Provision in solicitation that bids be mailed to certain address or hand-carried to depository located at mailing address does not prohibit hand delivery to official located in bid opening room who was authorized to receive bids.
2. Bid deadline for hand-carried bid may not be deemed to have arrived because of bid opening officer's removal of bids from depository since public declaration that time set for bid opening had arrived subsequently was made by authorized official consistent with clock in bid opening room.
3. Where bid opening officer states that hand-carried bid initially was tendered, according to clock in bid opening room, prior to scheduled bid opening time and prior to the authorized public declaration that such time had arrived, rejection of bid as late is not required even though officer initially rejected tender of the bid in accordance with time shown on unsynchronized clock outside bid opening room. Authorized public declaration, made in accordance with clock in bid opening room, that time for bid opening has arrived is prima facie evidence of that fact.
4. Factual statements made by attendee at bid opening who claimed to have observed occurrences from far corner of room are rejected in preference to contrary statements submitted by bid opening officer and alternate who directly participated in contested delivery of bid.
5. Hand-carried bid may be accepted even though received late since lateness is result of bid opening officer's erroneous rejection of initial tender which was timely made and consideration of bid does not compromise integrity of competitive bid system.
6. Notwithstanding that protester might have deduced the identity of the precise model on which low bid was submitted from shipping

weight and container size stated in bid on step two of two-step procurement, protest issue of model's acceptability under first step of procurement is timely since it was filed promptly after agency revealed the precise model bid by low bidder.

7. Protester's extrapolation from low bidder's data that low bidder would not meet contract's compaction test requirement is rejected since all permissible variations in compaction test procedures were not covered in low bidder's data and therefore unacceptability of low bidder's product has not been established.
8. Argument that low bidder's proposed unit is not acceptable because it did not meet specification requirement regarding both length of public marketing of unit and type of engine offered is rejected since record supports opposite conclusion.
9. While three units accepted under first step of two-step procurement were not equal in terms of weight, horsepower, or price, proposals frequently are based on different technical approaches. In the circumstances agency acted reasonably in determining that three proposals were acceptable and thus available for step two competition.
10. Departments are authorized under applicable procurement regulation to make administrative determinations prior to award to resolve suspected mistakes in bid.

Hyster Company has protested award to any other bidder under invitation for bids (IFB) No. 700-74-B-3876, issued by the Defense Supply Agency (DSA). The solicitation is the second step of a two step procurement for high speed compactors. Bid opening, as amended, was scheduled for December 18, 1974, and bids were received from Koehring Road Division, Hyster Company, and Caterpillar Tractor Company. Hyster contends that Koehring's low bid was late and that the equipment proposed by Koehring is in a different class from that offered by other bidders and is unacceptable. Alternatively, Hyster alleges that if the Koehring equipment is considered acceptable, the DSA specifications are ambiguous, requiring cancellation of the IFB and revision of the specifications.

The IFB provided that bids would be received at the procuring activity's Bid Opening Room in Building 12-1B or, if hand-carried, in the depositary located in that building until 10:30 a. m., local time, on the date of opening. All offers received were to be opened at that time.

The issue of whether Koehring's bid was late involves the time and manner in which it was received. DSA reports that shortly before 10:30 a. m. on the bid opening date, the bid opening officer proceeded to the depositary located in the reception room of Building 12-1B.

When the clock in the reception room indicated exactly 10:30, the bid opening officer opened the bid box, removed the bids, and carried them to the bid opening room some fifty feet away. DSA reports that almost immediately after entering the bid opening room this officer was approached by Koehring's representative who tendered the company's bid. DSA reports, based on the documented statements of the bid opening officer and her alternate, the clock in the bid opening room had not reached 10:30 a. m. when the bid was first tendered, but that the bid opening officer refused to accept the bid believing that the bid was late by the reception room clock. When the bid opening room clock read 10:30 a. m., the alternate bid opening officer announced the hour and that the time for bid opening had arrived. Both officers report that bids had not been opened at the time of this announcement. Solicitations issued for several procurements were scheduled to be opened at the appointed time.

Since the tender by Koehring representatives was rejected, they requested that the matter be discussed with the bid opening officer's supervisor. It is reported that the bid officer and the bidder's representatives left the bid room at approximately 10:32 a. m., before any bids were made available for examination (the bids were not read aloud). Following a brief discussion with the supervisor, the bid opening officer accompanied the bidders to the reception room where both Koehring representatives remained alone in possession of Koehring's bid for three to five minutes while the bid opening officer located counsel. The officer returned to the reception area with counsel and then proceeded with the bidder's representatives to the bid room. The party arrived there at approximately 10:45 a. m., after bids were opened and made available for examination. At approximately 10:50 a. m. Government personnel finally agreed to take possession of the Koehring bid.

Hyster Company argues that Koehring's bid is late and must be rejected. It contends the bid was required to be, but was not, hand-carried to the bid depositary by the time specified. In support of this argument Hyster has referred to the solicitation's bid delivery instructions, Armed Services Procurement Regulation (ASPR) § 2-402.1(a) (1974 ed.), concerning the opening of bids and past decisions of this Office. In this connection the solicitation provides:

"Sealed offers . . . will be received at the place specified in block 8 [DSA, Defense Construction Supply Center, Attn: DCSC-POB Bid Opening Room, Bldg. 12-1B] OR, IF HAND-CARRIED IN THE DEPOSITARY LOCATED IN BLDG. 12-1B, DCSC, Columbus, Ohio until 10:30 a. m. local time at the place of opening, 74 June 18 [subsequently amended to December 18, 1974]. If this is an advertised solicitation, offers will be publicly opened at that time. CAUTION - LATE BIDS/PROPOSALS. See applicable provision in Section C of this solicitation."

In our opinion it is self-evident that the above provision does not restrict an authorized Government official from receiving a hand-carried bid which is tendered to such official rather than placed in the bid depository. Moreover, we fail to see any valid purpose for imposing such a restriction as argued by Hyster. In this case the bid was tendered to the bid opening officer in the bid (opening) room, a location which is expressly listed in the solicitation (block 8) as a place for receipt of bids.

Furthermore, Hyster contends that pursuant to our decision in 47 Comp. Gen. 784, 786 (1968) the Koehring bid should be considered late because (1) it was not placed in the bid depository by 10:30 a. m. and (2) the bid deadline occurred by virtue of the bid opening officer's removal of the bids from such depository. In that decision we discussed the duty imposed upon the bid opening officer by ASPR § 2-402.1(a), which provides as follows:

"(a) the official designated as the bid opening officer shall decide when the time set for bid opening has arrived, and shall so declare to those present. He shall then personally and publicly open all bids received prior to that time * * *"

Our decision stated that the bid opening officer decided when the 2:00 p. m. deadline for receipt of bids had arrived "by removing all the bids from the bid depository box outside the bid opening room at 1:58 p. m., on May 2, 1968, and placing them in the room for public opening." We went on to say, however, that "we interpret ASPR 2-402.1(a) to mean that the bid opening officer's decision to commence opening bids at 2:00 p. m. prohibited consideration of a bid submitted * * * at 2:15 p. m. even though no bid prices from that particular set [solicitation] had been read." Thus, read in its entirety that decision does not stand for the proposition that a bid must be hand-carried only to bid depositories or that the deadline for hand-carried bids occurs when bids are removed from the depository. In fact, it has been our position that it is enough that the bid be delivered to the bid opening officer, or other Government representative authorized to receive it, at the scheduled time for opening. 40 Comp. Gen. 709, 711 (1961). Accordingly, we are unable to agree that Koehring's bid is late merely because it was hand delivered to the bid opening officer rather than to the bid depository prior to bid opening or that the time for bidding had passed merely because of the removal of bids from the depository irrespective of the actual time such removal took place.

Hyster also argues that the Koehring bid was not tendered by 10:30 a. m. on either the reception room clock or the bid opening room clock. In this connection the Government states that the reception room clock showed exactly 10:30 a. m. when bids were removed from the depository and that the bid in question was first tendered and rejected shortly thereafter in the bid opening room. However, the bid opening officer and her alternate have submitted in signed statements that the clock in the bid

opening room had not reached 10:30 a. m. when the Koehring bid was first tendered in that room; that the alternate officer announced that the time for bid opening had arrived when the bid opening room clock reached 10:30 a. m.; and that no bids were opened prior to this announcement.

Hyster states several bases for its belief that 10:30 a. m. had arrived on the bid opening room clock. It submits that the bid opening officer's refusal to accept Koehring's bid indicates it was past 10:30 a. m. Hyster argues that it is inconceivable that the bid opening officer "would have rejected the bid out-of-hand if she had been aware that [the bid opening room] clock showed only 10:29." However, in view of this officer's direct statement that the bid opening room clock had not reached 10:30 a. m. when she refused to receive Koehring's bid, her belief that bidding time had arrived and refusal to receive the bid apparently were based on the time shown on the reception room clock. Subsequently, the alternate bid opening officer declared, in accordance with the bid opening room clock, that the bid opening time had arrived. Statements by both officers indicate that bids had not been opened prior to such declaration. The alternate bid opening officer was authorized to make the declaration in accordance with ASPR § 2.402.1(b) (1974 ed.) and the contracting officer indicates that such action by an alternate is consistent with usual procedures.

Normally such a declaration serves as prima facie evidence of the arrival of the bid opening time. 40 Comp. Gen. 709, 711 (1961). Unless there is a clear record to show that the bid opening room clock showed a later time, the authorized declaration of bid opening time on the basis of the bid opening room clock must serve as the criterion for determining lateness. Thus, in this case the bid opening officer's initial belief that the time shown on the reception room clock was controlling does not overcome the effect intended by the regulation to be given the authorized public declaration. We therefore believe that Hyster has not made a case for lateness merely on the basis of the bid opening officer's initial rejection of the bid.

Hyster also argues that it was past 10:30 a. m. on either clock when Koehring's bid was tendered since time was consumed by the bid opening officer in placing the bids on the table used for bid opening or in handing them to the abstractors. However, the record before us does not indicate that such action delayed the tender of Koehring's bid. To the contrary, the bid opening officer has stated that the bid was tendered immediately after her entry into the room.

Hyster also has furnished a statement by a representative of the Caterpillar Tractor Company who attended the bid opening. The Caterpillar representative's statement recalling the bid opening is dated February 17, 1975, or two months after the bid opening, and was submitted in rebuttal to the procuring agency's initial

report to this Office dated February 10, 1975. This individual apparently was interested in two procurements for which bid opening was scheduled at 10:30 a. m. on December 18, 1975. The pertinent observations in the sequence presented in this statement are as follows: (1) at approximately 10:15 a. m. Caterpillar's representative proceeded to the bid opening room in the company of two Government contract personnel who were interested in the opening of another solicitation. These individuals positioned themselves in the corner of the room farthest from both the entrance to the room and the bid opening table; (2) while in the bid room Caterpillar's representative participated in a general conversation with the accompanying Government personnel and he observed that "the bid officers were opening the bid packages and filing the contents in folders"; (3) the Government buyer with whom he was conversing stated "Here comes someone with a bid" but that the Caterpillar representative did not observe the time this comment was made; (4) a young man in a white top coat entered the bid room carrying what appeared to be a bid package; (5) "soon" thereafter the Caterpillar representative was furnished two bid folders, one of which contained the Hyster and Caterpillar bids for the subject procurement, and he commenced copying these bids; (6) after copying the compactor bids he asked to see the enclosures to the Hyster bid, observed that Government counsel had been called to settle the late bid matter, and noticed a Koehring representative in the room holding what appeared to be a bid package; (7) after returning to his table to copy bids on another procurement he was distracted by a heated discussion taking place in the bid room during which a Koehring representative stated "A minute is sixty seconds long, and the clock in the lobby where the bid depositary is located is fast"; and (8) the Caterpillar representative became concerned about the synchronization of the clocks, proceeded to check the lobby clock, observed that it was one minute slower than the clock in the bid opening room, and upon his return to the bid room he reported this observation to both Government personnel in his company.

Hyster believes this statement establishes that (1) the reception room clock was one minute slower than the bid opening room clock and that it therefore was later than 10:30 a. m. on either clock when Koehring's bid was tendered; (2) the individual carrying Koehring's bid entered the bid room after the opening of bids had commenced; and (3) the bid was tendered after "the bid officers were opening the bid packages and filing the contents in folders." The Government personnel who were in the company of the Caterpillar representative in the bid opening room have submitted signed statements recalling that "it was close to" 10:30 a. m. when the young man in a white top coat entered the bid room with a hand-carried bid but both disavow any knowledge as to the exact time this occurred and neither recalls that opening of bids had commenced at that time. In addition, neither individual recalls that the Caterpillar representative commented

that the clock in the reception room was slower than the clock in the bid room or even that this individual checked the synchronization of the two clocks.

As to whether the individual carrying Koehring's bid entered the bid room after the commencement of the opening of bids, the bid opening officer and her alternate directly evidenced that the bid was first tendered in the bid room prior to 10:30 a. m., prior to the announcement that bid opening time had arrived and prior to opening of bids. Moreover, the contracting officer has reported that bids normally are placed unopened in folders on a table in the bid room according to solicitation number and that bids are not opened until the bid opening is announced. From our review of the record it is clear that the Caterpillar representative's attention was not directed exclusively to the occurrences at issue. Rather he was engaged in conversation with other individuals. In our opinion the Caterpillar representative's uncorroborated statement as to the point in time, vis a vis the actual opening of bids, that Koehring's bid was first tendered is not sufficiently convincing to cause us to question the statements of those directly involved in this episode.

In connection with the synchronization of the clocks at issue the contracting officer reports that he personally checked the clocks three hours after the bid opening and observed that the reception room clock was approximately 1 1/2 minutes faster than the bid opening room clock. In view of the actual observance that Koehring's bid was tendered prior to 10:30 a. m. on the bid opening room clock, we find that the weight of the evidence does not support the uncorroborated contrary statement of Caterpillar's representative.

Hyster also contends that Koehring's bid must be considered late since it was not put into the Government's possession until some 20 minutes after bid opening, during which time the opportunity for fraud and bid alteration existed for a 3-5 minute period while the Koehring representatives were alone outside of the bid opening room. Although Hyster does not allege that the Koehring representatives acted in such a manner, it believes that regard for the integrity of the competitive bid system requires that bids subject to such potential infirmities be rejected. In this connection Hyster relies on the requirement in the procurement regulations for receipt of bids prior to opening and also points out that in 40 Comp. Gen. 709, 710-11 (1961), this Office stated the following:

"The general rule is, of course, that except where due solely to delays in the mail for which the bidder is not responsible, bids not received by the time set for opening shall not be considered for award. See for example Armed Services Procurement Regulation 2-303.5. See also 37 Comp. Gen. 35. The basic purpose of that rule

is to prevent opportunities for fraud or undue advantage which might be obtained if bidders could submit their bids after the time set for bid opening. The requirement so far as we are concerned, however, is that the bid should be in the hands of the bid opening officer, or other Government representative authorized to receive it, at the scheduled time for opening. "

The general rule followed by this Office is that the bidder has the responsibility for the delivery of its bid to the proper place at the proper time. However, a hand-carried bid which is received late may be accepted where bid lateness was due to improper Government action and consideration of the late bid would not compromise the integrity of the competitive bid system. Le Chase Construction Corporation, B-183609, July 1, 1975; 51 Comp. Gen. 69 (1971); and 34 Comp. Gen. 150 (1954). We recognize that where there is a delay between the initial tender of a bid and subsequent Government possession of the bid after bid opening, and when there is a genuine question whether the bid is exactly the same as when originally tendered, rejection of the bid is necessary in order to safeguard the competitive bid system against the possibility of acceptance after bid opening of a subsequently altered or otherwise modified bid. See, e. g., B-143288, June 30, 1960. However, this Office has sustained the acceptance of a bid coming into the Government's possession after bids were exposed where it could be shown by corroborating evidence that the bid as tendered was not altered. 41 Comp. Gen. 807 (1962). DSA has advised this Office that "there is not the slightest indication that Koehring's bid was opened or in any way altered after [the Koehring representative] offered the same to [the bid opening officer] or that Koehring's representative gained any actual knowledge of the other bids before they returned to the bid opening room * * * at about 10:45." In this connection we note that bids were not read aloud but were made available for perusal in the bid opening room and that the Caterpillar representative was in possession of the public file copy until the reentry into the bid room of Koehring's representatives, the bid opening officer, and counsel. Although the opportunity for switching bids exists, the probability of such an occurrence is tenuous. We believe the record provides no basis to question whether the Koehring bid as originally tendered was the bid finally received. Since Hyster has not presented any evidence in this regard, we conclude that in the circumstances DSA may accept the Koehring bid.

With respect to the adequacy of the Koehring bid, Hyster has raised several objections. Hyster believes that the model K-300 proposed by Koehring is roughly half the weight and horsepower of the Hyster unit, and that it will not meet the minimum requirement that the compactor offered be capable of compacting 1500 compacted cubic yards per hour of soil. Hyster argues that Koehring's bid is thus nonresponsive and submits that the Government will be required to upgrade the Koehring proposal and to compensate Koehring for the

additional work done. As a result of DSA's action in permitting Koehring to bid its K-300 model (which is considerably less expensive than the other bidders' models), Hyster believes that DSA has not secured either the price competition contemplated by ASPR § 2-503.1(e) (1974 ed.) or the full and free competition required under ASPR § 2-502(a)(i) (1974 ed.). Hyster also believes that the Koehring model K-300 is not responsive since it allegedly has not been marketed for one year prior to the opening of the first step proposals and since the engine offered is not normally furnished on Koehring's commercial production compactors. Additionally, Hyster believes that the Koehring unit bid price is inconsistent with the extended bid price. Finally, Hyster argues that if the Koehring K-300 model is acceptable under the first step specifications, then such specifications are ambiguous, requiring cancellation of the procurement. Hyster contends it would have bid a less expensive model if it had interpreted the solicitation in the manner now urged by DSA.

With respect to Hyster's allegation that the Koehring bid is non-responsive and cannot be accepted because of noncompliance with both the first step specifications and ASPR, Koehring submits, and is joined by DSA, that Hyster's contention is untimely since it is made after the close of the first step of the procurement. It is contended that, at the latest, Hyster knew or should have known from the shipping weight and container size stated in the Koehring bid documents, which information was available by December 19, 1974, that Koehring had bid on the K-300. Thus, it is argued that Hyster's protest, filed on February 21, 1975, is untimely.

This Office will consider bid protests against agency action under step one of a two-step procurement, even if filed after bid opening under step two, as long as the protester did not have a prior opportunity to know the basis of protest. B-172886, July 13, 1971. Pursuant to 4 C. F. R. § 20.2(a) (1975), in effect at the time its protest was filed, Hyster was required to file its protest within five working days of when it knew or should have known that DSA would consider the Koehring K-300 model to be acceptable. In our opinion Hyster was not in a position to know with certainty that the K-300 model was considered acceptable until February 24, 1975, when the contracting officer finally supplied Hyster with the information, first requested on December 19, 1974, concerning Koehring's proposal. Under these circumstances, we do not believe Hyster was required to protest the acceptability of the K-300 unit until it received this information which it otherwise diligently pursued.

The major thrust of Hyster's contention that Koehring's bid is nonresponsive to the specification is that the K-300 cannot meet the solicitation compaction requirement. Paragraph 2.2 of the solicitation's item description required, in part, that the compactor be

capable of compacting a minimum of 1500 compacted cubic yards per hour of soil conforming to type SC (Unified Soil Classification System) to at least 95 percent Modified AASHO in compacted lifts of not less than 6 inches. Paragraph 2.18.2 required offerors to submit with proposals the compaction data stated in Appendix I to prove that the soil specified has been compacted to a density of 95 percent Modified AASHO at a rate of not less than 1500 compacted cubic yards per hour. In addition paragraph 2.18.3 requires that the first compactor produced in accordance with the item description be subject to an operational demonstration as outlined in Appendix II.

The test required in Appendix II (Productivity and Gradeability) provided a more detailed procedure to establish whether the compactor would meet the minimum performance requirements. Specifically, the compacted fill plat width was to be 31 feet wide with an actual width of the fill being a minimum of 33 feet. The offeror was to continue compaction operation until it believed 1500 cubic yards had been compacted, with time used in density testing not counted as compaction time. Three tests were to be made, with a required minimum compaction rate of 1500 compacted cubic yards per hour.

On the basis of the "Appendix I" data DSA ultimately concluded that the K-300 had the capability to compact 1500 cubic yards as required in the item description. However, Hyster contends that Koehring's data indicates that the K-300 can compact the required 1500 cubic yards only when used at 100 percent efficiency, excluding turn around time and any other time the compactor was off the test plat during compaction. As indicated by Hyster, the K-300 compacted 1554 cubic yards at 100 percent efficiency on an optimum 24 foot test lane using 12 passes. However, it is pointed out that the Operational Demonstration in Appendix II will require 18 passes over the 31 foot wide area of compacted fill, that excess compactor drum overlap will reduce efficiency to approximately 86 percent, that time lost between passes will lower efficiency to 83 percent yielding approximately 1300 cubic yards which can be compacted by the K-300 in a running hour. Thus, Hyster believes that Koehring cannot meet DSA's compaction requirements pursuant to the test set out in Appendix II, which it interprets to be the minimum productivity level desired by DSA.

By letter dated August 20, 1975, DSA forwarded the Army's technical analysis of Hyster's argument. The Army states:

"1. The extrapolation of the Koehring test data by Hyster has been examined. We can find no error in their extrapolation if the compacted width must be exactly 31 feet. However, use of this extrapolation to prove that the Koehring machine cannot meet the compaction rate required during the first article tests requires the assumption that there are no variables involved. This would not

be the case. The compacted depth, soil, moisture content, and compaction speed may all be different during the first article tests than those used in obtaining the test results submitted during step 1 by Koehring. The extrapolated test results of 1300 cubic yards is 13 percent lower than the required 1500 cubic yards. An increase in average speed from 6.8 to 7.7 MPH or an increase in compacted depth from 7 inches to 7.9 inches, or a combination thereof, would result in meeting the requirements. The soil composition and moisture content can be optimized to improve test results. All of these changes in test procedures and techniques are plausible.

"2. The requirement for data to be submitted during step 1 stated: 'The offeror shall furnish actual data ("soil-bin" analysis not acceptable) to prove that his compactor/roller has compacted a soil corresponding to group SC of Unified Soil Classification System to a density of 95 percent modified AASHO at a rate of not less than 1500 compacted cubic yards per hour.' Koehring submitted data that met this requirement. There was no requirement that he submit data which proved that he could meet the compaction rate under the conditions of test specified for the first article demonstration, either from an actual standpoint or an extrapolated standpoint. Therefore, the data submitted by Koehring would not be used for extrapolation, especially since it would be impossible to exactly duplicate the test again. The unvalidated data was not intended to eliminate the requirement for the test under the first article demonstration.

"3. This center does not have data base which would either refute or substantiate Koehring's guarantee that their model K-300 compactor will compact the required 1500 cubic yards per hour under the conditions specified for the first article demonstration.

"4. Based on the above, it is concluded that:

A. The extrapolation of the Koehring data by Hyster does not validly establish that Koehring cannot meet the requirement of the item description.

B. Koehring has met the technical requirements of Appendix I of the item description as pertains to the production rate.

C. There is no technical basis for excluding Koehring from contract award."

The two-step formal advertising procedure has been recognized as combining the benefits of competitive advertising with the flexibility of negotiation. 50 Comp. Gen. 346 (1970). While the second step of this procedure is conducted under the rules of formal advertising, see ASPR § 2-503.2 (1974 ed.), the first step, in furtherance of the goal of maximized competition, contemplates the qualification of as many technical proposals as possible under negotiation procedures. 50 Comp. Gen. 346, 354 (1970). This procedure requires that technical proposals comply with the basic or essential requirements of the specifications but does not require compliance with all details of the specifications. 53 Comp. Gen. 47, 49 (1973). Thus, the responsiveness of the first-step proposal would not be affected by its failure to meet all the specification details "if the procuring agency is satisfied * * * that the essential requirements of the specification will be met." 50 Comp. Gen. 337, 339 (1970). It is our opinion that the Army has demonstrated a substantial basis for its determination that the Koehring proposal is acceptable notwithstanding the data submitted by the firm.

We recognize that the solicitation's Proposal Evaluation Plan stipulated that the data submitted under step one would be evaluated to assure the Government that the required compaction rate could be achieved by the equipment offered. However, we do not agree with Hyster's observation that the Koehring proposal must therefore be rejected on the grounds it cannot meet the operational test compaction requirements as stated in Appendix II since the operational test is required to be performed during the course of contract performance and the data necessary to establish compliance with the test was not available. Although DSA could not accept a proposal which it knew could not meet the operational test requirements, the solicitation did not require that the step one compaction standards were to be read together with the Appendix II data requirements. With respect to Hyster's contention that the Koehring unit must be rejected for lack of assurance that it can meet DSA's requirement, our interpretation of the solicitation is that data submitted by offerors which satisfied the step one data requirement was sufficient assurance that the unit offered could meet the minimum compaction requirements.

In connection with Hyster's argument that the K-300 is not acceptable under the first step solicitation because the K-300 has not been marketed for one year prior to submission of proposals and also because the engine offered is not normally furnished in the K-300 commercial compactor, Koehring has advised this Office that as of April 30, 1975, over 48 percent of all K-300 units shipped had Caterpillar engines. The first of these units was shipped in January 1970. Koehring units recently were shipped in January 1975, and

additional units were scheduled for shipment in May and June 1975. It appears that the Caterpillar engine normally is used in the commercial K-300 unit. As to whether the K-300 had been "marketed for one year prior to the date of the opening of the technical proposal," Hyster would construe this provision as requiring that the product be marketed within the year immediately preceding the solicitation's opening. However, we believe this interpretation is too restrictive and not required by the solicitation language. Since a review of the record indicates that the K-300 unit has been marketed since 1970, we believe Hyster's contention is without merit.

Hyster also challenges the competitive nature of this procurement, contending that once DSA accepted the varying proposals under step one Koehring's much cheaper model was destined to capture the low bid position. Hyster questions whether the procurement could be competitive when, under step two, Hyster's unit weighed 57,000 pounds with 330 horsepower as compared to 30,000 pounds and 175 horsepower for the K-300. Since the resulting bid price of \$49,840 for the Koehring unit was considerably lower than the Hyster bid of \$64,908 (with Caterpillar at \$89,164), Hyster submits that the second step was essentially noncompetitive and thus improper. Moreover, Hyster points to the full and free competition envisioned by ASPR § 2-502(a)(i) (1974 ed.) and adequate price competition required by ASPR § 2-503.1(e) (1974 ed.), and alleges that DSA did not fulfill its obligation to insure such competition.

We have recognized that it is inherent in two-step formal advertising that when an offeror submits a proposal the technical approach it adopts may vary from the technical approaches adopted by the other offerors. High Vacuum Equipment Corp., B-179806, March 4, 1974. In determining which proposals are acceptable, the responsible procuring agency has considerable discretion and its determinations will not be overturned unless unreasonable. 51 Comp. Gen. 85 (1972). We believe the agency's actions in this case were based upon its stated requirements and were within the bounds of its discretion.

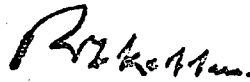
Finally, Hyster points out that Koehring's unit and extended prices do not agree, and thus it argues that the bid should be disqualified. The record reflects that, for the total quantity of 208 compactors, Koehring bid a unit price of \$49,840 and an extended total amount of \$10,574,720, which is the equivalent of \$50,840 per unit, or a total of \$208,000 over the unit price bid for the advertised quantity. It appears, however, that Koehring is the low bidder irrespective of which amount is proven to be the intended bid.

In this connection, Departments are authorized to make administrative determinations prior to award to resolve suspected

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mistakes in bids. ASPR § 2-406 (1974 ed.). We understand that DSA has requested verification of Koehring's bid and that the matter will be administratively resolved pursuant to the above-cited regulation.

In view of the above, the protest is denied.



Deputy Comptroller General
of the United States