

*Fitzmaurice*

**DECISION**



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

**9173**

FILE: B-192990

DATE: February 15, 1979

MATTER OF: The Entwistle Company

*[Protest Contending that Low Bid Was Nonresponsive]*  
DIGEST:

1. In order for bid to be responsive it need not comply literally with all of IFB's requirements but must offer to perform, without exception, exact thing called for in IFB so that upon acceptance it will bind contractor to perform in accordance with all IFB's terms and conditions.
2. Bid is responsive even though contracting officer is required to interpret bidder's intent where bidder only submits contract number from prior contract in order to obtain waiver of IFB's descriptive literature requirement.
3. Where contracting officer's interpretation of information bidder supplied to satisfy IFB's descriptive literature requirement is only reasonable one possible, no ambiguity exists and bid was properly found responsive.
4. GAO will not question agency decision to make award prior to resolution of protest where decision to do so was made in accordance with applicable regulations.

The Entwistle Company (Entwistle) protests the award of a contract to Platt Manufacturing Corp. (Platt) under invitation for bids (IFB) No. N00140-78-B-1330 issued by the Naval Regional Procurement Office (Navy), Philadelphia, Pennsylvania.

The IFB requested bids for three MK 7 MOD 3 arresting engine assemblies together with various parts and components. Six bids were received with Platt the low bidder and Entwistle the next low bidder. Shortly

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after bid opening, Entwistle filed a protest with the contracting officer contending that Platt's bid was nonresponsive because of a failure to comply with the IFB clause entitled "Requirement for Descriptive Literature." This clause provides in pertinent part:

"(a) Descriptive literature as specified in this Invitation for Bids must be furnished as part of the bid and must be received before the time set for opening bids. \* \* \*

"(b) Failure of descriptive literature to show that the product offered conforms to the specification and other requirements of this Invitation for Bids will require rejection of the bids. \* \* \*

"(c) However, the requirements for furnishing descriptive literature may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has previously furnished to the purchasing activity or to the Naval Air Engineering Center, under a prior contract and the bidder identifies the contract, and (ii) the Contracting Officer determines that such product meets the requirements of this Invitation for Bids." (Emphasis in Original.)

The purpose of this clause is to have each bidder submit descriptive literature which furnishes information on the air flask, a component required by the IFB and depicted in drawing No. 509549. Yet, as noted above, paragraph (c) permits a waiver of this requirement if the bidder states that the product he is offering is the same as a product he has previously furnished the Navy, the bidder identifies the prior contract, and the contracting officer determines that such product meets the requirements of the current IFB.

In the space provided after paragraph (c), Platt only inserted: "N00140-76-C-0443." The contracting officer concluded that the only reasonable interpretation of Platt's bid was that it intended to deliver arresting engine assemblies with air flasks which were the same as those used in the performance of contract No. N00140-76-C-0443. At the time of bid opening, Platt had already delivered a satisfactory MK 7 MOD 3 arresting engine assembly under contract No. N00140-76-C-0443. The contracting officer found that the flask delivered as a component of that engine assembly met all the requirements of the subject solicitation. Therefore, he concluded that Platt's bid was responsive and suitable for award. Upon being notified of this decision, Entwistle filed a protest with our Office.

Entwistle contends that the descriptive literature requirement clearly demands that if a bidder seeks to have the requirement waived under the provision of paragraph (c), not only must the prior contract be identified, but the bidder must also make an affirmative statement that the item to be supplied will be the same as the product furnished under that prior contract. Since it is undisputed that Platt did not make such an affirmative statement, Entwistle concludes that Platt has not satisfied the IFB's descriptive literature requirement and that, therefore, its bid was nonresponsive. In addition, Entwistle also contends that the contracting officer's interpretation of the Platt bid is not necessarily the only reasonable one possible. Entwistle argues that an equally reasonable interpretation is that Platt's omission of any information other than the contract number was simply because Platt did not wish to stipulate the intended design of the air flask at the time of bid. Accordingly, Entwistle maintains that Platt's bid should also be found nonresponsive because (1) the contracting officer was required to interpret Platt's intention in the first place, and (2) the contracting officer's interpretation of Platt's bid is not the only reasonable one possible.

The Navy has argued, and Entwistle has conceded, that the contracting officer could not simply ignore Platt's insertion of "N00140-76-C-0443" into the bid and thus treat that number as totally irrelevant. It is agreed, therefore, that at the very least Platt made an attempt to comply with paragraph (c), thus permitting a possible waiver of the requirements for furnishing descriptive literature.

At the outset, we note that in order for a bid to be responsive it need not comply literally with the solicitation's requirement. See, e.g., E-Systems, Inc., B-190693, March 28, 1978, 78-1 CPD 236; Armed Services Procurement Regulation/Defense Acquisition Regulation (ASPR/DAR) § 2-405 (1976 ed.). We have held that the test to be applied in determining the responsiveness of a bid is "whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof." 49 Comp. Gen. 553, 556 (1970). Therefore, Platt's failure to state, as required by paragraph (c), that the product offered is the same as a product it has previously furnished the Navy does not render its bid nonresponsive so long as it can be determined that Platt's bid unequivocally offers to provide, without exception, the requested air flask in total conformance with the IFB's terms and requirements. Thus, whether Platt's bid is responsive or not depends on whether the contracting office was correct in interpreting the insertion of the contract number after paragraph (c) as an unequivocal offer to provide an air flask which is exactly the same as the air flask provided under contract No. N00140-76-C-0443.

In Entwistle's opinion, the mere fact that the contracting officer had to interpret the information Platt supplied to fulfill the descriptive literature requirement is sufficient grounds to question the responsiveness of Platt's bid. We do not agree.

Contracting officers are often called upon to interpret the information furnished in a bid in order to determine whether or not the bid is responsive. See, e.g., Environmental Land Surveys, B-191765, July 6, 1978, 78-2 CPD 13; Simmonds Precision, B-185469, March 18, 1976, 76-1 CPD 186. Thus, the need for the contracting officer in this case to interpret part of Platt's bid does not in itself render the bid nonresponsive.

From the record presented, it appears that Entwistle's key argument is that since Platt's insertion of the contract number is subject to more than one reasonable interpretation, an ambiguity is created and the ambiguity makes the bid nonresponsive. The Navy, on the other hand, argues that its interpretation that Platt has offered to supply an air flask exactly the same as the one provided under contract No. N00140-76-C-0443 is the only reasonable one possible and, therefore, the bid is responsive.

When determining the responsiveness of a bid, the controlling factor is not whether the bidder intends to be bound, but whether this intention is apparent from the bid as submitted. 42 Comp. Gen. 502 (1963). Thus, if Platt's bid is ambiguous, as Entwistle seems to contend, then the intent to be bound is not apparent from the bid submitted and Platt's bid must be found nonresponsive. See James W. Boyer Company, B-187539, November 17, 1976, 76-2 CPD 433.

In 48 Comp. Gen. 757 at 760 (1969), we stated:

"The mere allegation that something is ambiguous does not make it so. Similarly, some factor in a written instrument may be somewhat confusing and puzzling without constituting an ambiguity, provided that an application of reason would serve to remove the doubt. In other words, an ambiguity exists only if two or more reasonable interpretations are possible. \* \* \* "

Based on this rule, Platt's insertion of "N00140-76-C-0443" must be read in context, that is, as submitted in connection with paragraph (c) of the descriptive literature requirement, and not in isolation.

Entwistle contends that it is reasonable to interpret Platt's submission as an indication that Platt simply did not wish to stipulate the intended design of the air flask at the time of bid. We disagree. Read in context, the insertion of "N00140-76-C-0443" after paragraph (c), logically and reasonably, can only be read to mean that Platt has furnished an air flask under this prior contract and will furnish the identical flask under the proposed contract. Thus making its intention to be bound apparent from its bid, Platt is obligated to supply an air flask in strict compliance with the specification for the air flask provided under contract No. N00140-76-C-0443. We must conclude, therefore, that since only one reasonable interpretation is possible, no ambiguity exists and Platt's bid was properly determined to be responsive. Environmental Land Surveys, supra.

Entwistle also questions the propriety of the Navy awarding the contract to Platt while this protest was pending. Entwistle points out that delivery of the engine assemblies is not required until June 1980 and believes that the only reason for an award prior to our decision is because Platt refused to extend the acceptance period of its bid. In Entwistle's opinion, this is not sufficient reason for such action. The Navy, however, maintains that the substantial savings to be realized by accepting Platt's bid before the expiration of its acceptance period justified the award to Platt in accordance with ASPR/DAR § 2-407.8(b)(2) and (3).

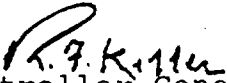
Since it was determined that an award must be made promptly, a decision to go ahead with the award was made at a higher level than the contracting officer and in accordance with applicable regulations. Where

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such actions have been undertaken, the determination to proceed with an award prior to protest resolution is not subject to question by our Office. LaBarge Incorporated, B-190051, January 5, 1978, 78-1 CPD 7.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States