



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Jamco Constructors, Inc.

File: B-283172.2

Date: October 4, 1999

Richard R. Flowers, Jr., Esq., Fairfield, Farrow, Flowers, Pierson & Strotz, and Bari A. Hankins, Jamco Constructors, Inc., for the protester.
M. Brooke Lamson, Esq., U.S. Army Corps of Engineers, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Procuring agency properly rejected protester's bid for transformers as nonresponsive, where bid included descriptive literature for two transformers, the literature for one showed it did not meet solicitation requirement, and bid did not indicate which transformer would be furnished; it thus was not clear that protester was offering to meet all solicitation requirements.

DECISION

Jamco Constructors, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DACW54-99-B-0015, issued by the U.S. Army Corps of Engineers for replacement of a transformer and electrical upgrade work at the Island Creek Pumping Station, John H. Kerr Reservoir, near Boydton, Virginia.

We deny the protest.

The IFB required bidders to submit descriptive literature, including a sketch or drawing, for the transformer being offered. IFB at 00100-6, 00010-8. The IFB cautioned that if the descriptive literature failed to show that the product offered conforms to the requirements of the solicitation, the bid would be rejected. IFB at 00100-6.

Jamco submitted drawings for both a Delta Star, Inc. transformer and a General Electric (GE) Prolec transformer. The Corps determined from the drawings that the GE transformer was unacceptable because (among other reasons) the drawings showed the low-voltage bushings on the incorrect sidewall. Although the Delta Star

descriptive literature did show compliance with the solicitation requirements, Jamco's bid did not indicate which transformer it would supply if it were awarded the contract. Consequently, the agency rejected Jamco's bid as nonresponsive because it was not clear from the bid that Jamco would supply an acceptable transformer. In this regard, where, as here, an IFB requires descriptive literature to establish that the offered item meets IFB requirements, a bid accompanied by descriptive literature that is ambiguous as to whether the bidder is offering an acceptable item must be rejected as nonresponsive. Electrophysics Corp., B-258674, Feb. 13, 1995, 95-1 CPD ¶ 63 at 2; Calma Co., B-209260.2, June 28, 1983, 83-2 CPD ¶ 31 at 6-7.

It is undisputed that Jamco's descriptive literature showed the low-voltage bushings in a different location than the IFB drawings. Jamco argues, however, that the solicitation did not require that the low-voltage bushings be in the same location as shown in the solicitation drawings, and that the Corps thus improperly determined that its literature showed the GE transformer did not meet the specifications. In this regard, Jamco believed that the final locations and dimensions of items such as the low-voltage bushings could not be determined until the final transformer design is completed. Jamco therefore assumed that the descriptive literature only had to show that the transformer met the technical specifications relating to the transformer's operational and performance capabilities. In support of this position, Jamco notes that the IFB required the successful bidder to submit outline drawings and assembly and detail drawings for approval within 120 days after award, IFB at 16320-5, and that the equipment arrangement or equipment device requirements could be changed subject to approval. IFB at 16050-16.¹

Where a dispute exists as to the meaning of the terms of a solicitation, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. Lankford-Sysco Food Servs., Inc.; Sysco Food Servs. of Arizona, Inc., B-274781, B-275081, Jan. 6, 1997, 97-1 CPD ¶ 11 at 3-4. We think the IFB provisions here, read together, required that the bushings be located in accordance with the IFB drawings. The standard descriptive literature clause in the IFB (Federal Acquisition Regulation § 52.214-21) stated that "[d]escriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation" IFB at 00100-6. The clause went on to state that "[t]he failure of descriptive literature to show that the product offered conforms to the requirements of this solicitation will require

¹Jamco asserts that the GE drawing should have been deemed acceptable because it stated that the bushings could be located in a different place than shown on the drawing. However, this statement was not a valid substitute for the required drawing showing that the bushings were properly located, and Jamco could not supply information to demonstrate the responsiveness of its bid after bid opening. See Sillcocks Plastics Int'l, Inc., B-277549, Sept. 19, 1997, 97-2 CPD ¶ 81 at 3.

rejection of the bid.” Id. The IFB specified that the descriptive literature submitted was to include “[a] sketch or drawing of the transformers which the bidder proposes to furnish, showing outline dimensions, location of bushings and general appearance.” IFB at 00010-8. The IFB included drawings that located the bushings in a specific place, IFB Drawing UE 1005, Plate E-6, and required that all work be performed in accordance with the drawings. IFB Document 00800 at 9.

These provisions clearly established a close relationship between the IFB drawings and the required descriptive literature. In light of this relationship, and the nature and purpose of the literature requirement, we think Jamco and the other bidders were on notice that the drawings were not provided merely for information purposes, but reflected the agency’s requirements. It follows that Jamco should have known that their descriptive literature was required to show that their offered transformer was configured in a manner that conformed to the IFB drawings. This is particularly the case with the bushings, the locations of which were specifically required to be indicated on the submitted drawings.

The fact that the IFB required the contractor to submit other drawings after award, and provided that changes might be approved after award, did not negate the requirement to show that the offered item conformed to the IFB drawings. Notwithstanding the provisions that applied to performance of the contract, the agency legitimately could require bidders to demonstrate in their bids that the offered transformer was configured in a manner that met the agency’s known needs at the time of bid submission. In this regard, if, as the protester states it assumed, the only purpose of the descriptive literature requirement was to show that the transformer met operational and performance requirements, there would have been no need for bidders to submit drawings showing where the bushings were located. Since the drawings of the GE transformer do not show compliance with the solicitation, and it was not clear from the bid which transformer Jamco would supply, the bid properly was rejected as nonresponsive.²

The protest is denied.

Comptroller General
of the United States

²To the extent Jamco now argues that there is no need for the bushings to be located as indicated on the IFB drawings, its protest is untimely. Given our finding that the IFB made it sufficiently clear that the drawings reflected the agency’s requirements, any protest that the IFB drawings should not be controlling for purposes of determining the acceptability of offered items had to be raised prior to bid opening. See 4 C.F.R. § 21.2(a)(1) (1999).