



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

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B-177862

May 29, 1973

Girard Machinery and Supply Company
3428 Roosevelt Street
San Antonio, Texas 78214

Attention: Mr. M. L. Girard
President

Gentlemen:

We refer to your telefax of January 23, 1973, and subsequent correspondence, concerning your protest against an award to Central Engineering, Inc. (Central), under Invitation for Bids (IFB) No. DABE34-73-B-0015, issued by the Department of the Army on October 26, 1972, for a self-propelled, truck-mounted, broom-vacuum street sweeper which contained the following pertinent specifications:

2.b. Main broom to be * * * no less than 60 inches long, 16 inches in diameter. * * *

* * * * *

7.a. Truck engine * * * This engine shall be of adequate brake horsepower to * * * operate truck component, * * * without overheating if left running at idle for a period of at least 2 hours.

b. Truck cab * * * Driving and steering controls shall be located on right hand side of truck cab * * *.

You maintain that Central's specifications, dated January 17, 1972, for its Street Sweeper (VAC-ALL Models E5-13, E5-16, and E7-16D) show that the company's bid was nonresponsive to the IFB's requirements, as amended, that the sweeper be capable of sweeping an area of no less than 60' in width and that the steering controls of the truck cab "may be located on either right hand side of truck cab." Consequently, you request that Central's contract be cancelled, and an award made to your firm.

[Protest Alleging

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Your principal argument makes reference to Amendment No. 2 to the IFB. The amendment deleted the dimensional requirements for the main broom; it also modified the requirement that the driving and steering controls be located on the right hand side of the truck cab, as follows: Driving and steering controls may be located on either right hand side of truck cab * * *. The amendment further required that the sweeper be capable of sweeping an area of no less than 60' in width.

When bids were opened on December 19, 1972, it was noted that Central had submitted the lowest bid at \$26,987 and that you had submitted the second lowest bid at \$29,448.80 (including \$2,615.80 for Federal Excise Tax). Your bid also contained three exceptions to the specifications, the more pertinent one of which is stated as follows:

Exceptions:

Page 4, Item 7, a.

You specify: Truck engine must have capacity to idle 2 hrs. without overheating.

We furnish: This item subject to truck manufacturer warranty and engine warranty.

In view thereof, Girard's bid was determined to be nonresponsive, and since Central was otherwise considered eligible for award, the contracting officer awarded the requirement to that company on January 15, 1973.

With respect to your allegation that Central's specifications of January 17, 1972, show that its bid is nonresponsive, there is no evidence that Central's bid contained any indication that the unit to be furnished the Government would deviate from the requirements in the IFB. Nor is there any indication in Central's bid, by way of model number or otherwise, that the unit to be furnished would be in accordance with its January 1972 specifications as you suggest.

While Central did apparently furnish the contracting officer the day after bid opening descriptive information concerning the unit it would furnish under the contract, this additional data (not required by the IFB) had no effect on the company's legal obligation to submit a unit strictly conforming with all requirements. We have held, in this regard, that the responsiveness of a bid must be determined from the bid itself without reference to extraneous aids or explanations regarding a bidder's intentions. 45 Comp. Gen. 221, 222 (1965).

You also assert that Central should have disclosed in its bid, as you did in your bid, that it could not affirm the required idle capacity of the truck engine since Central was also obligated to bid the only truck with right hand steering offered for sale in the United States. You further state that the engine idling capacity of this truck differs from that set forth in the IFB.

In reply, the contracting officer states that Amendment No. 2 was intended, among other things, to permit bidders to offer steering controls on either side of the truck; that the words "left or" were erroneously omitted from the sentence quoted above in Amendment No. 2 which set forth the revised requirement for the location of steering controls in the truck cab; but that the Department's intent was discernible from the use of "may" and "either" in the sentence.

We do not believe that bidders were on notice that the words "left or" were omitted from the sentence. However, the meaning of the sentence without these words is unclear, and we believe bidders should have asked the contracting officer to clarify the meaning before bid opening. Since you did not make this request before bid opening, and because the contract was awarded over four months ago, we do not believe the Government's interest would be served by cancelling Central's award and re-advertising the requirement.

You also contend that the amended specifications restricted competition for the award to Central. This aspect of your protest, relating to an alleged impropriety which was apparent in the solicitation prior to bid opening, should have been filed with this Office prior to bid opening to be considered timely under our Interim Bid Protest Procedures and Standards which are in the Code of Federal Regulations (CFR) at 4 CFR 20.2(a). Since you did not timely protest this alleged defect, we must decline to review this allegation.

Your final contention regarding the alleged advice given your firm by the contracting officer, prior to bid opening, that "minor deviations" to the amended specifications would be acceptable is, we believe, adequately answered by the fourth paragraph on page two of the contracting officer's report, a copy of which has been furnished to you, which stated in pertinent part:

No such exchange took place between the Contracting Officer and any bidder-representative. * * * Directorate of Facilities Engineering, was contacted prior to bid opening by representatives of the Girard Machinery and Supply Co., but did not make any commitments that could have been interpreted as a Contracting Officer's decision. * * * In any event,

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Paragraph 3 of Standard Form 33A which was a part of the solicitation reads in part "Oral explanations or instructions given before the award of the contract will not be binding."

In review of the foregoing, your protest must be denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States