



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Contract Lease Management, Inc.

File: B-276999.2

Date: October 21, 1997

Sam Z. Gdanski, Esq., for the protester.

Richard D. Lieberman, Esq., Sullivan & Worcester, for Block Management, Inc., an intervenor.

Col. Nicholas P. Retson and Capt. Philip T. McCaffrey, Department of the Army, for the agency.

Jacqueline Maeder, Esq., and Glenn Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting officer properly rejected the protester's bid as nonresponsive where the invitation for bids (IFB) required the submission of the manufacturer's name and model number for the washers and dryers to be supplied under the solicitation in order to establish that a bidder's specifically identified equipment would satisfy the IFB's listed requirements and the protester did not identify in its bid the specific washers being offered.

DECISION

Contract Lease Management, Inc. (CLMI) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAKF48-97-B-0006, issued by the Department of the Army for the purchase of washers and the lease of dryers for installation at various locations at Fort Hood, Texas, and the subsequent conversion of the IFB to a request for proposals (RFP).

We deny the protest.

The IFB, issued April 15, 1997, was for the purchase of top-loading horizontal-axis (h-axis) clothes washing machines and the lease of four types of clothes drying machines,¹ along with associated maintenance and repair services. The solicitation contemplated the award of an indefinite delivery, indefinite quantity (IDIQ) contract for a 1-year base period with four 1-year options. Under the terms of the IFB, the agency reserved the right to make two separate awards, one for the washers and one for the dryers.

¹The four types of dryers were single load electric dryers, single load gas dryers, double load gas dryers, and stacked double load gas dryers.

The IFB's statement of work (SOW) listed the minimum requirements for each item of equipment. Among other things, the IFB required that the washer be a commercial, top-loading h-axis washer, and that the double load gas dryers and stacked double load gas dryers be equipped with 6-inch exhaust ducts. For each piece of equipment, the IFB required bidders to specify the manufacturer, brand, and model that they were offering. Additionally, the IFB included Federal Acquisition Regulation (FAR) § 52.212-1, which states, in relevant part, that, at a minimum, bidders must submit a technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. The IFB also required bidders to submit descriptive literature with their bids in accordance with FAR § 52.214-21(c), which states, in relevant part, that the failure of descriptive literature to show that the product offered conforms to the requirements of this solicitation will require rejection of the bid.

Five bids, including CLMI's, were received by the May 13 bid opening. After withdrawal of the apparent low bid, CLMI's bid became low. However, CLMI's bid did not identify the manufacturer, brand, and model of the washing machine it was offering to provide. Additionally, the equipment CLMI proposed for the double load gas dryers and stacked double load gas dryers were equipped with 8-inch exhaust ducts rather than the 6-inch exhaust ducts required by the solicitation. Finally, CLMI's bid did not include descriptive literature for either the washers or the dryers.

The agency determined that CLMI's bid was nonresponsive for failing to identify the washer the bidder was offering and for offering unacceptable dryers. Specifically, the agency found that it could not determine if CLMI was bidding a washer that conformed to the requirements of the IFB because CLMI did not identify the manufacturer or model of the washer in its bid. The agency also found CLMI's bid to be nonresponsive for the double load gas dryers and the stacked double load gas dryers because they were equipped with 8-inch exhaust ducts rather than the 6-inch duct required by the solicitation.²

Three other bids were also found nonresponsive because they offered equipment that was no longer being manufactured, or offered dryers with 8-inch exhaust ducts. One firm submitted a bid on washers only that was considered responsive. However, the agency determined that it was not in its best interests to award only the washer portion of the requirement because it believed that it could obtain a more reasonable cost by making a single award for both washers and dryers. The contracting officer determined, in accordance with FAR § 14.404-1(c)(8) to cancel the solicitation and, in accordance with FAR §§ 14.404-1(e)(1) and 15.103 to

²The agency explains that adaptation of 8-inch exhaust ducts to 6-inch vents was not acceptable because the potential buildup of carbon monoxide poses a health and safety risk.

complete the acquisition by negotiation.³ Bidders were notified of the nonresponsiveness determinations, provided an explanation for the determinations and notified of the conversion.

CLMI protests that its proposal was responsive for both the washers and the dryers. As to the washers, the protester argues that since its bid took no exception to the requirements, it should have been considered responsive. As to the dryers, CLMI argues that the Dexter 8-inch exhaust ducts are easily adapted to 6-inch duct vents.

To be responsive, a bid must represent an unequivocal offer to provide the exact thing called for in the IFB, such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Hagglunds Prinoth, B-238244, Apr. 12, 1990, 90-1 CPD ¶ 385 at 2. Here, the IFB clearly required the submission of a bid which identified by manufacturer and model the specific equipment that would be supplied, clearly stating that this information was necessary for the agency to determine whether the offered equipment, as specifically identified, would satisfy the agency's requirements. Further, regarding the dryers, the IFB was unequivocal that 6-inch exhaust ducts were required.

The record shows, and the protester does not dispute, that CLMI did not identify in its bid the manufacturer's name and model number for the washers it was offering. Thus, the contracting officer could not evaluate whether the protester's unidentified washer would satisfy the IFB's stated requirements. While the protester may not have taken exception in its bid to the IFB's requirements, this fact does not constitute the identification on the bid schedule of the specific equipment being offered or show that the unidentified washers would satisfy the IFB's requirements.

³FAR § 14.404-1(c)(8) provides that an IFB may be canceled and all bids rejected after bid opening but before award, when no responsive bid has been received from a responsible bidder. FAR § 14.404-1(e)(1) provides that, where an IFB has been canceled because no responsive bids were received, the agency may complete the acquisition through negotiation, in accordance with FAR § 15.103, which allows the contracting officer to negotiate and make award without issuing a new solicitation as long as stated criteria concerning notice, competition, and price are met.

A bidder must demonstrate, including through submission of the specific manufacturer and model number where, as here, that information is required by the IFB, that its equipment will comply with the IFB's requirements.⁴ See Alaska Unlimited, B-257156, Sept. 2, 1994, 94-2 CPD ¶ 87 at 3-4.

The protester also complains that the cancellation of the IFB and subsequent conversion to negotiation creates the potential for an auction. As discussed above, the FAR specifically provides that, when an IFB has been properly canceled because no responsive bids were received, the agency may complete the acquisition through negotiation. Accordingly, CLMI's complaint regarding conversion of the IFB to an RFP fails to state a valid basis for protest.

The protest is denied.

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⁴The protester argues that it subsequently submitted descriptive literature for a washer which conforms to the specifications and, therefore, its bid on the washers was responsive. We disagree. The responsiveness of a bid must be ascertained from the bid documents themselves, not from clarifications provided by the bidder after bid opening. Schweigers, Inc., B-236071, Oct. 12, 1989, 89-2 CPD ¶ 345 at 3. In any event, CLMI's submissions after bid opening suggest that its bid was, in fact, based on multiple washers with differing characteristics, some of which were acceptable to the agency and some of which were not.