

Little
P.L.U.

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540

FILE: B-189310

DATE: October 13, 1977

MATTER OF: Engineering Equipment Company, Inc.

DIGEST:

in procurement by foreign Government, bidder's failure to include manufacturer's direct warranty to purchaser, as required in invitation for bids, renders bid materially nonresponsive. However, we recommend that the word manufacturer be more precisely defined in future solicitations.

Engineering Equipment Company, Inc. (EEC) has complained that the U.S. State Department, Agency for International Development (AID), improperly approved the Arab Republic of Egypt's (ARE) rejection of EEC's bid to supply asphalt batching plants. ARE has purchased the plants from the third low bidder (FEC was second low) under its invitation for bids No. 2, financed by AID Grant No. 263-12-004. EEC contends that, despite ARE's Ministry of Housing and Reconstruction's determination that EEC was nonresponsive to the invitation, it complied in every material way with the solicitation's requirements.

The solicitation required that:

"Bids submitted from other than a manufacturer, accompanied by a certified letter from a manufacturer stating that the bidder is an authorized agent of the manufacturer and that all units supplied by the agent will be made by the manufacturer and warranted by the manufacturer in accordance with this IFB."

AID contends that EEC's failure to accompany its bid with the certified letter specified above renders EEC's bid nonresponsive under the terms of the solicitation. EEC's

B-189310

bid, according to AID, "limits * * * /the/ rights of the Purchaser or AID as those rights have been specified or defined in the Bidding Documents." See New World Research Corporation, B-186084, August 31, 1976, 76-2 CPD 206.

EEC's position is that although it is not a manufacturer of the equipment to be supplied, its status as the designated "export manager" for Littleford Asphalt Products (Littleford), coupled with the demonstrated reliability of Littleford's equipment, puts its bid in total compliance with the terms of the solicitation.

However, even if we assume that EEC's status as an "export manager" is tantamount to being an agent for the purposes of meeting requirements placed on bidders who are not manufacturers of the items supplied, EEC's bid did not contain Littleford's direct warranty to ARE. AID has concluded that under the circumstances a direct warranty by the manufacturer of the equipment to be supplied is extremely valuable to ARE and, therefore, concurred in ARE's determination that EEC's bid was nonresponsive. We cannot say that AID's actions in this regard are unreasonable.

EEC argues that, even if a manufacturer's direct warranty was a material requirement, then such a provision should have been applied equally to a manufacturer bidding in its own name but which arguably intended to supply only a part of the equipment to be furnished. According to EEC, the Barber Greene Company (Barber Greene), the third low bidder, should have been required to supply with its bid a direct warranty from the manufacturer of the asphalt storage tanks of which Barber Greene is only the supplier and not "the manufacturer."

AID, in effect, interpreted the solicitation's provisions as requiring the direct warranty only of the principal manufacturer of the equipment purchased. The direct warranty should be obtained by the manufacturer

R-189310

being a bidder or certifying its intent to be directly liable on the warranty. Since Barber Greene is itself a principal manufacturer, and, since AID states that a certification from Littleford would have sufficed, we see no prejudice accruing to EEC merely because Barber Greene did not supply warranty certifications from its suppliers. Therefore, EEC's complaint is denied.

However, we recognize that the word manufacturer used in the clause could be subject to differing interpretations. Therefore, by this decision we are recommending that the word manufacturer, when used to designate firms required to supply direct warranties to the purchaser, be more precisely defined in future solicitations.

Paul G. Leubling
Acting Comptroller General
of the United States