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DECISION



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

FILE: B-192331

DATE: November 17, 1978

MATTER OF: The R. H. Pines Corporation

DIGEST:

Where solicitation specifies delivery FOB destination and is silent as to mode of transportation, allegation that foreign supplier's intended shipment by charter vessel inevitably will result in delivery of damaged pipe not in conformity with specifications pertains to contractor's responsibility, not responsiveness of offer. GAO no longer reviews affirmative determinations of responsibility absent exceptions not present here. Protest is denied.

The R.H. Pines Corporation (Pines) protests the award of a contract to the British Steel Corporation (BSC) by the Defense Logistics Agency (DLA) for the purchase of three-quarter inch steel pipe to be delivered F.O.B. destination at Tracy, California, and Columbus, Ohio.

The pipe is to be produced in the United Kingdom and shipped by BSC via charter vessel to United States ports for onward shipment. Pines contends that shipment by charter vessel will inevitably result in the delivery of damaged steel and that BSC therefore is unable to comply with the requirements of the solicitation. Pines contends BSC's offer was therefore nonresponsive because BSC proposed to furnish supplies not in conformance with the specifications and that correction would result in deliveries outside the time period specified; Pines analogizes this to an offeror which furnishes a bid sample not in accordance with the specifications. Pines also expresses concern that DLA is not requiring a clean bill of lading versus a claused bill of lading for the ocean shipment.

The threshold question is whether Pine's objections pertain to BSC's responsibility or the responsiveness of BSC's bid. As a general rule, questions of responsiveness pertain to whether a bidder would be legally obligated by acceptance of its bid to perform in accordance with the solicitation, whereas responsibility pertains to a prospective contractor's ability to perform in accordance with the specifications. See, e.g., Storage Technology Corporation - Reconsideration, E-190035, March 31, 1978, 78-J CPD 257; Reliable Building Maintenance Co., R-190167, February 17, 1978, 78-1 CPD 139; Cubic Western Data, Inc., B-189578, October 7, 1977, 77-2 CPD 270, aff'd. B-189578, November 8, 1977, 77-2 CPD 351; General Fire Extinguisher Corporation, R-186954, November 15, 1976, 76-2 CPD 413. The distinction is germane because this Office no longer reviews affirmative determinations of responsibility absent certain exceptions not present here. Rehitz School of Languages, B-184296, November 28, 1975, 75-2 CPD 350; Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64.

Despite Pines' characterizations to the contrary, we think it is clear that the objections stated here pertain to the question of BSC's responsibility. The solicitation required BSC by its bid agreed to deliver the specified quantity of pipe in accordance with the terms of the solicitation, as it is obligated to do under the resulting contract. The solicitation is silent as to the method of transport to be employed by a prospective contractor and in view of the FOB destination delivery terms which place the risk of loss or damage in transit on the contractor, we think the question of the mode of transportation selected by BSC pertains to its ability to perform rather than its obligation to perform. Since the risk of loss or damage in transit is on the contractor, we view the question of a clean vs. claused bill of lading (a claused bill of lading may contain such notations as "10 percent of tubes bent" to indicate the presence of damage prior to loading on board ship whereas a clean bill of lading contains no such indications) to be a matter for resolution between BSC and its shipper. Furthermore, we consider inapt Pines' analogy between the circumstances here and that of a prospective contractor which furnishes a non-conforming bid sample since BSC in fact offered to perform in accordance with the specifications.

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The protest is denied.

*R. F. K. H. H.*  
Deputy Comptroller General  
of the United States