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DECISION



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

FILE: B-211587.3 **DATE:** March 4, 1985
MATTER OF: Champion Road Machinery International
Corporation--Reconsideration

DIGEST:

1. Although on a prior procurement one bureau of an agency did not reject as nonresponsive a bid which offered nonconforming equipment, another bureau of the same agency is not estopped or precluded from rejecting a similar bid that offers equipment which does not conform to the specifications. Prior decision holding that it was proper to reject a bid offering road graders with "no-spin" differentials submitted under a specification requiring road graders with "lock-unlock" differentials is affirmed, where no error of fact or law is shown.
2. Whether or not other bidders could have offered item, which protester states was sole source item from awardee, protester was not prejudiced since finding that its bid was nonresponsive is still legally correct.

Champion Road Machinery International Corporation (Champion) requests that we reconsider our decision in Champion Road Machinery International Corporation; Border Machinery Co., B-211587; B-211587.2, Dec. 13, 1983, 83-2 C.P.D. ¶ 674.

We affirm our prior decision.

Bid Item No. 1

In its initial protest, Champion contended that the no-spin drive train differential provided with its type II, size 5 road grader met the specification requirement for a lock-unlock device and, therefore, its bid should not have been found nonresponsive. We concluded, however, that the specification clearly required a lock-unlock differential and that the procuring agency, the Department of Interior, Bureau of Indian Affairs (BIA), provided a prima facie showing that a lock-unlock differential, rather than a no-spin differential, was necessary to satisfy its minimum needs.

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Champion contends that since another bureau of the Department of the Interior, the Bureau of Land Management (BLM), purchased Champion's no-spin differential road graders under the specification at issue, BIA should not have rejected Champion's road graders under a solicitation incorporating the same specification. Interior concedes the truth of the allegation concerning the BLM procurement, that in the prior procurement BLM misinterpreted the specification to conclude that Champion's motor grader was in conformance with the lock-unlock requirement of the specification.

Notwithstanding the prior actions of BLM or any other agency, we consistently have taken the position that erroneous practices by contracting personnel in prior procurements do not estop or preclude the agency from rejecting a bid where required to do so by law. Wilmington Shipyard, Inc., B-214467, June 27, 1984, 84-1 C.P.D. ¶ 677. Champion has not shown any error in our prior decision which concluded that the lock-unlock differential constituted the minimum needs of BIA and that Champion's no-spin differential did not satisfy BIA's minimum needs.

Bid Item No. 2


Bid Item No. 2 of the IFB solicited bids for a type II, size 7 road grader with a "successive gear" type transmission. Champion's bid was rejected as nonresponsive because it offered a different type of transmission. Champion contended in its initial protest that this item was a sole-source procurement under the pretense of being competitive. We concluded, however, that Champion's allegation was unfounded because two additional firms who did not bid on item no. 2, Border and John Deere, had offered a motor grader with a successive gear-type transmission under a prior solicitation.

In its request for reconsideration Champion states that only one American company, the awardee, makes a road grader with a successive gear-type transmission with the basic weight, size, horsepower and blade pull to meet the requirements of bid item no. 2. Upon review of the record, it appears that while Border and John Deere manufacture a grader with a successive gear type transmission, they do not manufacture a size 7 grader. There is no indication that the procuring agency was aware of this fact when the solicitation was issued.

However, by letter of today, we are advising the Secretary of Interior of this situation and recommending that in future procurements of graders, a determination be made to assure that more than one firm offers the required item. If not, sole-source negotiations should be conducted, if otherwise justified.

The fact remains, however, Champion does not offer a grader with the required transmission and, therefore, was properly found nonresponsive and ineligible for award.

Our prior decision is affirmed.

for 
Comptroller General
of the United States