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DECISION



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

FILE: B-217469 **DATE:** March 27, 1985
MATTER OF: Silent Hoist & Crane Co., Inc.

DIGEST:

1. A requirement that bidders submit detailed Technical Information Packages with their bids to describe the items offered is not improper since the information requested for the most part is needed by the agency to determine whether the items conform to the IFB's specifications and to the overall Military Specification governing the acquisition.

2. A protester cannot reasonably argue that the mere paper work burden of preparing required documentation prevented it from submitting a bid in the face of uncontroverted evidence that no other bidder found the requirement so burdensome that it was precluded from competing.

Silent Hoist & Crane Co., Inc. protests that the Department of the Army improperly required bidders to submit detailed Technical Information Packages (TIPs) with their bids under invitation for bids (IFB) No. DAAG02-84-B-0146. The procurement is for the acquisition of three types of forklift trucks in various quantities. Silent Hoist asserts that the TIPs were unnecessary to establish the conformity of offered equipment with the specifications, and that this requirement placed such an undue burden upon the firm as a small business concern that it was precluded from submitting a bid. We deny the protest.

The solicitation sought offers to furnish various quantities of the following forklift truck types, as specified in section B:

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- Item 0001 -- (3) Truck, forklift, diesel engine driven, pneumatic tired, 15,000 pound capacity with cab;
- Item 0002 -- (2) Truck, forklift, LPG [liquified petroleum gas] engine, solid rubber tired, 12,500 pound capacity; and
- Item 0003 -- (6) Truck, forklift, diesel engine driven, pneumatic tired, 15,000 pound capacity.

Section B provided that all items were to be furnished in accordance with Military Specification MIL-T-52864A (1 June 1983) and the specifications set forth in section C of the solicitation.

Section C enumerated detailed specifications that each offered forklift truck type had to meet. For example, item 0001 forklift trucks were required to have features such as: a capacity of 15,000 net pounds at a 24 inch load center at lifts up to 166 inches; a collapsed maximum mast height of 131 inches; a minimum fork height of 166 inches; and a maximum right angle turn dimension of 265 inches. Section C also informed bidders that they were required to submit TIPS with their bids for each offered forklift truck type, and that these TIPS were to be "evaluated by the Government to assure these specifications have been met."

Each TIP was 28 pages in length and provided spaces in which the bidder was to insert technical data as to the specific dimensions and performance characteristics of its offered models. Although the TIPS requested information with respect to the specifications set forth in section C, they also asked for additional data, including that regarding the features of various manufactured components, that had not been enumerated as specifications in section C. For example, for item 0001 forklift trucks, bidders were required to indicate: the engine manufacturer and engine model number, and the engine's total displacement, bore, stroke, and compression ratio; lifting speed (capacity load) and lowering speed (unladen) in feet per-minute; and vehicle noise levels in decibels at various loads and speeds.

Silent Hoist complains that the TIPs were an unnecessary and burdensome requirement because the Army's actual minimum needs were adequately stated by the specifications provided in section C and the firm accordingly urges that the TIPs could not affect the responsiveness of any bid since the bidder was obligated to furnish products which conformed to those specifications. The firm contends that the TIP requirement thus violated the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.202-5(b) (1984), which provides that descriptive literature shall not be required unless the agency needs it to determine before award whether the offered products meet the specifications and to establish exactly what the bidders propose to furnish.

In this regard, Silent Hoist points out that the preface to each TIP only stated that its purpose was to "provide a document for compiling data on Commercial Materials Handling Equipment," therefore, in the firm's view, clearly indicating that the TIPs were not to be used to determine conformity with the specifications. Silent Hoist believes that the TIP requirement would only have been appropriate if the forklift trucks being acquired were other than the bidders' standard commercial models, which is not the case here. The firm contends that the TIP requirement imposed an undue burden upon it as a small business concern, thus preventing it from submitting a bid, and accordingly requests that the IFB be canceled and reissued without the requirement. We find no merit in the protest.

The FAR, 48 C.F.R. § 14.202-5(a) defines "descriptive literature" as information which shows the characteristics or construction of a product or explains its operation, and which is furnished by bidders as part of their bids to describe the products offered. That section further provides that the term includes only that information which is required to determine the acceptability of the offered product. Accordingly, as Silent Hoist has indicated the FAR provides that descriptive literature shall not be required unless it is needed to determine whether offered products conform to the specifications and to establish exactly what is being furnished. See 48 C.F.R. § 14.202-5(b).

Our view has been that when an IFB requires the submission of descriptive literature with the bids, the IFB must definitely set forth the components or specifications for which such literature is required, and literature is not required to show compliance with specifications beyond those set forth. Computer Sciences Corp., B-213134, May 14, 1984, 84-1 CPD ¶ 518.

Here, forklift trucks were to be furnished in accordance with Military Specification MIL-T-52864A, as clearly referenced in the IFB, the particular specifications in section C being derived from that document. Although some information requested by the TIPs did not pertain to mandatory features of the forklift trucks as imposed by either the IFB's specifications or the Military Specification, our examination of the record reveals that much of the data requested was necessary to determine equipment conformity.

By way of illustration, we note that for item 0001, the Military Specification at paragraph 3.6 only requires that the forklift truck's diesel engine "shall be a commercial type," whereas the applicable TIP asked for the exact displacement, bore, stroke, and compression ratio figures. Clearly, the TIP data requirement in this instance exceeded what was called for by either the specifications in section C or the Military Specification itself. However, in contrast, we note that the TIP for item 0001 asked bidders to indicate the lifting speed with capacity load of their product, and this informational requirement paralleled paragraph 3.22.1 of the Military Specification which provides that the lifting speed with the rated load is not to be less than 55 feet per minute over the entire distance from ground level to maximum lift height. Similarly, the TIP required information as to the vehicle noise levels in decibels at varying loads and speed, reflecting paragraph 3.22.14.1 which mandates that the noise level "shall not exceed 90 dB(A)" under certain test conditions.

In our view, it is obvious that the main purpose for the TIP requirement was to enable the Army to determine that offered forklift trucks conformed to the specifications set forth in section C and to the overall Military Specification governing the acquisition. Despite the fact that the preface to each TIP states that its purpose was only for data compilation, we believe that the overall

tenor of the solicitation clearly indicated to bidders that the TIPS were a necessary requirement to assure the agency that its actual minimum needs were being met. Of course, as we have already indicated, the TIPS could not properly be used to determine bid responsiveness with respect to any information provided, or not provided, that did not pertain to the specific requirements of section C and the Military Specification, Computer Sciences Corp., supra, but there is no indication that any bid was rejected because an accompanying TIP provided incomplete data or indicated that an offered item had non-mandatory features the Army considered to be undesirable. Hence, we do not accept Silent Hoist's assertion that the TIP requirement was unnecessary and therefore in violation of the FAR.

We also find no merit in Silent Hoist's assertion that the requirement was so burdensome that it prevented the firm from submitting a bid. The Army's administrative report reveals that four bids were received in response to the IFB, one of them from a small business concern, and all of the bids were accompanied by TIPS. There is no evidence that any other bidder was precluded from submitting a bid because of the requirement. Significantly, Silent Hoist does not allege that it could not complete the TIPS because it had not developed sufficient data regarding the features and characteristics of its equipment, or could not obtain the necessary information from component manufacturers, but rather only that the requirement involved the preparation of a large amount of paper work. We do not think that Silent Hoist can reasonably argue that the mere burden of completing such documentation prevented it from competing under this solicitation. In any event, a solicitation requirement which may restrict the competition will not be held to be unduly restrictive and therefore legally objectionable when it represents the actual needs of the agency, see Small Business Systems, Inc., B-213009, July 26, 1984, 84-2 CPD ¶ 114, and the necessity for the TIP requirement has been fully established here.

The protest is denied.

for Signature of
Harry R. Van Cleve
General Counsel