



**The Comptroller General
of the United States**

Washington, D.C. 20548

Goddard

Decision

Matter of: Mountain Air Helicopters, Inc.

File: B-223099.2

Date: August 6, 1986

DIGEST

1. A protest based on alleged improprieties in a solicitation which are apparent prior to the bid opening date must be filed before that time.
2. Where the flight manual for a helicopter bid by the protester shows that the helicopter cannot meet the terms of the solicitation, the bid was properly rejected as nonresponsive.
3. A bid that is nonresponsive may not be corrected after opening.
4. A deficiency or deviation which goes to the substance of a bid by affecting the price, quality, or quantity of the article offered is a major deviation that requires the bid to be rejected as nonresponsive. Protester's bid of a helicopter with a 94 knot airspeed, six knots less than called for in the solicitation, is not an immaterial deviation.

DECISION

Mountain Air Helicopters, Inc. (MAH), protests the rejection of its bid as nonresponsive under invitation for bids No. R6-86-68S issued by the United States Forest Service for the provision of helicopter services.

We deny the protest.

The contracting officer rejected MAH's bid because the helicopter offered, Aerospatiale's Alouette III, could not maintain 100 knots true airspeed while equipped as prescribed in the solicitation and at the altitude, temperature and payload specified.

The solicitation called for the helicopter to meet the following requirements:

"ONE STANDARD FACTORY EQUIPPED HELICOPTER, FULLY OPERATED, MEETING THE REQUIREMENTS OF THIS SCHEDULE AND THE SPECIFICATIONS FOR OPERATION AT THE DESIGNATED BASE AND DURING THE PERIODS SHOWN BELOW.

036282

- "A. SEATING CAPACITY FOR A MINIMUM OF 6 PASSENGERS.
- "B. CAPABILITY OF HOVERING IN GROUND EFFECT (HIGE)
AT 6500 FEET MSL AND 20°C WITH PAYLOAD OF 1010 POUNDS,
AS DETERMINED ACCORDING TO HELICOPTER LOADING
INSTRUCTIONS USING ACTUAL PILOT WEIGHT AND FUEL FOR ONE
HOUR AND 30 MINUTES. HELICOPTER MUST BE CAPABLE OF
CARRYING MINIMUM ACCEPTABLE PAYLOAD AT ALL TIMES.
- "C. MUST BE CAPABLE OF MAINTAINING 100 KTS TAS KNOTS WHILE
EQUIPPED AS PRESCRIBED IN THE CONTRACT (INCLUDING ANY
EXTERNAL NONJETTISONABLE LOADS) AT THE ALTITUDE
TEMPERATURE, AND PAYLOAD SPECIFIED IN B ABOVE."

The Forest Service used charts in the Alouette III's flight manual to determine if it could perform the above requirements. These charts demonstrate the Alouette III's cruising speed and maximum speed in level flight when the specific density altitude of operation and the gross weight of the helicopter are given. By referring to the requirements of the solicitation, the Forest Service determined that the maximum speed in level flight for the Alouette III is 94 knots and its cruising speed is 92 knots. The Forest Service also found that, due to lack of internal cargo space in the Alouette III, MAH would have to install cargo racks on the Alouette III, further degrading performance to 87 knots maximum speed in level flight and 86 knots for cruising speed.

MAH contests the above assessment and states that while the flight manual charts show that the Alouette III can fly at 98 knots, in fact the Alouette III is capable of maintaining a true airspeed of 100 knots. MAH states that its request to demonstrate the helicopter's capabilities to Forest Service personnel was denied. Further, MAH states that Alouette III's V_{ne} (never-exceed speed), under the specified conditions, is 101 knots and its true airspeed is 107 knots. MAH states that external cargo racks are not required on the Alouette III since it has 15 cubic feet of internal baggage compartment space available which meets the solicitation's storage requirement.

MAH argues, alternatively, that even if the Alouette III operates at 98 knots rather than 100, the two-knot deviation is not material. As support, MAH states that the specification refers to airspeed, but the speed at which the helicopter reaches its destination is dependent upon groundspeed. The difference between groundspeed and airspeed is a function of wind velocity and direction and the pilot's technique and expertise affect his speed in reaching the destination. Given this possibility of variation in groundspeed, MAH argues that a two-knot difference in airspeed is immaterial to the contractor's ability to perform the contract.

Finally, MAH states that the Forest Service ignored the Federal Aviation Administration's (FAA) standards defining aircraft velocity and established ambiguous specifications in their place.

With regard to the last contention, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986), a protest based on alleged improprieties in a solicitation which are apparent prior to the bid opening date must be filed before that time. Consequently, MAH's argument, filed after bid opening, that the Forest Service should not have ignored FAA standards, will not be considered on the merits. Cardkey Systems--Request for Reconsideration, B-220668.2, Mar. 12, 1986, 86-1 C.P.D. ¶ 243.

A bid, to be responsive, must comply in all material respects to the terms of the solicitation. Provost's Small Engine Service, Inc., B-215704, Feb. 4, 1985, 85-1 C.P.D. ¶ 130. Responsiveness concerns whether the bidder has unconditionally offered to provide exactly what is called for in a solicitation; responsibility concerns its ability to do so. Raymond Engineering, Inc., B-211046, July 12, 1983, 83-2 C.P.D. ¶ 83. By contending that it should be allowed to demonstrate to the Forest Service, after bid opening, that its Alouette III can fly at 100 knots, MAH is essentially arguing that the 100 knot airspeed requirement is a matter of responsibility and may be proven after bid opening. We do not agree. The bidding schedule clearly called for a helicopter which could maintain 100 knots true airspeed at the specified conditions. Since MAH offered a helicopter whose flight manual showed that it could not perform the requirements of the solicitation, the Forest Service had no choice but to reject the bid as being nonresponsive. In this connection, MAH cannot be allowed to demonstrate after bid opening that the Alouette III can perform in accordance with the contract. A bidder's intention to comply with the material terms of an IFB must be manifest from the bid itself and may not be provided by explanations after bid opening. L. H. Morris Electric Inc., B-219732, Oct. 8, 1985, 85-2 C.P.D. ¶ 392.

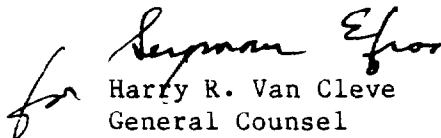
With regard to whether or not the Forest Service was correct in its interpretation of the flight manual, MAH offers no evidence to prove its contentions that the Alouette III meets those requirements. The Forest Service has shown from the flight manual's charts that the Alouette III is nonresponsive. MAH merely makes conclusory statements that the Alouette can perform in accordance with the contract, but does not show how it reaches those conclusions from the flight manual. Accordingly, we find that the Forest Service was justified in rejecting MAH's bid as nonresponsive.

As to MAH's contention that the difference between the Alouette III's speed of 98 knots and that called for in the solicitation, 100 knots, is immaterial, we note initially that it is MAH's own unsupported assessment that the Alouette III can perform at 98 knots whereas the Forest Service determined from the flight manual charts that its performance is a maximum of 94 knots.

A deficiency or deviation which goes to the substance of a bid by affecting the price, quality, or quantity of the article offered is a major deviation that requires the bid to be rejected as nonresponsive. However, a deficiency which is a matter of form, or which constitutes some immaterial deviation from the exact requirements of a specification that would not affect either the price, quality, or quantity of the article is a minor informality that may be waived or cured. What constitutes a minor deviation is dependent on the particular circumstances of each case. Evans, Inc.--Request for Reconsideration, B-218963.2 June 26, 1985, 85-1 C.P.D. ¶ 730.

In this instance, the Forest Service placed the 100-knot requirement in the solicitation because under its prior contract for helicopter services it found that several helicopters were only capable of 87 knots. The Forest Service was concerned that since the area of response for the helicopters had been enlarged, an acceptable response time might not be maintained by helicopters with lower speeds. In view thereof, we accept the Forest Service's finding that the airspeed requirement was material and rendered MAH's bid nonresponsive.

The protest is denied.


for Harry R. Van Cleve
General Counsel