



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Brussels Steel America, Inc.

File: B-223974

Date: October 24, 1986

DIGEST

1. Protest challenging the ability of the apparent low bidder, whose bid took no exception to the invitation for bids, to provide the required product raises an issue of responsibility, rather than of responsiveness. The General Accounting Office does not review affirmative determinations of responsibility unless there has been a showing of possible fraud or bad faith by government officials or that definitive responsibility criteria have not been met. Neither showing was made here.

2. An otherwise acceptable product need not be rejected solely because it exceeds the IFB's specifications since it does not present the type of deviation that gives the bidder an unfair advantage over its competition.

DECISION

Brussels Steel America, Inc. (Brussels), protests the proposed award of a contract for carbon steel to Huntington Forge, Inc. (Huntington) by the Defense Logistics Agency under invitation for bids (IFB) No. DLA500-86-B-0985. Brussels contends that Huntington's low bid on six line items is nonresponsive because its sources of supply do not produce the mill edge strip steel required by the solicitation.

We deny the protest.

The solicitation invited bids to furnish hot rolled carbon steel with a mill edge^{1/} to various locations throughout

^{1/} The specifications define mill edges as those resulting from the hot rolling process. These edges do not conform to any particular contour and may contain imperfections that would be detrimental if joining the edges by welding were required. Cut edges are the normal edges resulting from shearing, slitting or trimming of the mill edge sheets.

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the United States. The IFB provided that award would be made on an item-by-item basis for each of the nine items. Huntington's bid prices were the lowest on six line items and Brussels' prices were lowest on the other three line items. Brussels protested to the agency alleging that the plants Huntington listed as its sources of supply do not make mill edge strip steel and that Huntington's bid was therefore non-responsive. After the contracting officer made an investigation, she concluded that Huntington's bid took no exceptions to the requirements and that Huntington could provide the required steel. Accordingly, she then denied the protest and Brussels protested to our Office.

In our view, Brussels' protest raises an issue of responsibility rather than responsiveness since it is essentially a challenge to Huntington's ability to provide the required steel.

Responsiveness in government contracts refers to whether a bid as submitted reflects an unequivocal offer to provide the exact thing called for in the IFB so that acceptance of the bid would bind the contractor to meet the government's needs in all material respects. Power Test, Inc., B-218123, Apr. 29, 1985, 85-1 CPD ¶ 484. Huntington's bid took no exception to the terms and conditions of the invitation, and therefore must be considered to be responsive. Westinghouse Electric Corp., B-220374, Nov. 8, 1985, 85-2 CPD ¶ 534.

Responsibility refers to a bidder's apparent ability and capacity to perform the contract requirements. A. Metz, Inc., B-213518, Apr. 6, 1984, 84-1 CPD ¶ 386 at 7. This is the crux of Brussels' protest which alleges that Huntington cannot perform because its sources of supply do not manufacture mill edge strip steel. Our Office, however, does not review an affirmative determination of responsibility, which precedes any contract award, unless there has been a showing of possible fraud or bad faith by government officials or that definitive responsibility criteria were not met. See 4 C.F.R. § 21.3(f)(5) (1986); Macho Tire Co., B-223299, June 13, 1986, 86-1 CPD ¶ 551. Neither showing has been made here.

In any event, we note that, in view of Brussels' protest, the contracting officer asked Huntington to show how it would meet the mill edge requirement. Huntington provided letters from its proposed suppliers and from a processor which indicate that the steel will be manufactured with cut edges

but will be finished to a round, smooth edge, without definite contours, by the processing firm. The contracting officer, with the support of DLA technical personnel, determined that the finished steel to be furnished by Huntington will meet all requirements of the specifications which reflect the agency's minimum needs. In fact, DLA's technical personnel determined that the steel to be furnished by Huntington will exceed the minimum requirements of a mill edge because it is free of the defects "inherent with a mill edge such as: cracked edges, thin edges (feather) and damaged edges." An otherwise acceptable product need not be rejected because it exceeds the specifications since it does not present the type of deviation that gives the bidder an unfair advantage over its competition. Interface Flooring Systems, Inc., B-206399 et al., Apr. 22, 1983, 83-1 CPD ¶ 432 at 9.

Since we have found Brussel's protest to be without merit, we deny its claim for reimbursement of the costs of preparing and presenting its protest. Designware, Inc., B-221423, Feb. 20, 1986, 86-1 CPD ¶ 181.

The protest is denied.

for *Seymour E. Egan*
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General Counsel