



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Colt Industries

File: B-225483

Date: March 16, 1987

DIGEST

Bid should not be rejected as nonresponsive merely because a drawing accompanying the bid contained a restriction on its disclosure where the drawing is not necessary to evaluate the bid. Cancellation of invitation for bids (IFB) because agency determined all bidders were nonresponsive to drawing requirement is not justified where the drawing is not necessary for evaluation of bids. Therefore, the agency should reinstate IFB and make award to the low, responsive bidder -- eligible for award.

DECISION

Colt Industries protests the decision of the Jacksonville District, Army Corps of Engineers, to cancel invitation for bids (IFB) No. DACW17-86-B-0049 for the replacement of operating machinery for a pumping station in Florida, and to resolicit the requirement under a request for proposals. We sustain the protest.

The Army canceled the solicitation because it determined five bidders, including the low bidder, Electricon Corporation, to be nonresponsive to the IFB's requirement for an installation layout drawing. The contracting officer found Colt, the second low bidder, nonresponsive because the installation layout drawing Colt submitted contained a restrictive legend providing that:

" . . . This material is CONFIDENTIAL and contains proprietary information and other rights which are the sole and exclusive property of [Colt] . . . [a]ny reproduction, use, copying or disclosure to others is forbidden without the prior written consent of an officer of [Colt]."

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The contracting officer rejected the other bids because none of these bids contained the drawing.

Colt argues that the drawing was not needed to determine the essential nature of its product, and that other unrestricted information in the bid was adequate for that purpose.

The IFB contained the standard provision advising that descriptive literature, including drawings, required elsewhere in the solicitation must be included with the bid and that failure to submit descriptive literature to show the product offered conformed to the requirements of this solicitation required rejection of the bid. The IFB provided that the following drawings and descriptive literature, among other things, should be furnished:

"(a) print of a drawing of the complete station in plan showing the major items of equipment the contractor proposes to furnish.

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"(c) The above drawings should show the overall dimensions of major individual items and such other dimensions as are necessary to show that the machinery to be furnished could be properly installed in the space provided in the station without major dimensional changes of the structure"

The agency report contains two opinions in response to the protest. The contracting officer asserts that the drawing was a material requirement and thus rejection of Colt's bid was proper. He states that the drawing was required to show how each bidder's particular machinery would fit into the pump station, its exact layout, the location of air intake exhaust systems and other important equipment. The contracting officer points out that Colt's placing of a restrictive legend on its bid drawing rendered the bid nonresponsive under Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-4 (1986) and decisions of our Office, see, e.g., Computer Network Corp., B-183639, Nov. 12, 1975, 75-2 C.P.D. ¶ 297, which, in effect, provide that where the descriptive literature is necessary to disclose the essential nature and type of system offered, a restriction on the descriptive literature is a proper basis for finding the bid nonresponsive.

The agency report, however, also contains a statement from the chief counsel, Army Corps of Engineers, who disagrees with the contracting officer. Based on an Army technical

opinion, the chief counsel states that the layout drawing was unnecessary to permit other bidders to understand the nature and type of equipment Colt bid. The chief counsel asserts that dimensions shown for the equipment in other descriptive literature were adequate to permit a determination that the equipment proposed would fit into the existing pump station layout, which was the stated purpose for requiring the drawing. The chief counsel states that the layout drawing contains no unique information considered necessary to assure the government that the equipment would meet its needs. Thus he concludes that the drawing requirement was immaterial and thus the contracting officer should be required to review the bids and make an award to the low bidder if it is otherwise responsive.

We have held that where requested descriptive data such as a drawing is not actually needed for bid evaluation purposes, it should be considered informational, and failure to furnish such information does not prevent acceptance of a bid where the bidder would be otherwise bound to perform in accord with the IFB. Patterson Pump Co., B-218388, May 6, 1985, 85-1 C.P.D. ¶ 504; Patterson Pump Co., B-216133, et al., Mar. 22, 1985, 85-1 C.P.D. ¶ 333.

We are persuaded by the chief counsel's argument that information required under other provisions of the IFB provided the same information required by the drawing. For example, another portion of the IFB descriptive data provision specifically required bidders to provide "approximate weights, dimensions and other data" for the diesel engine and gear transmission unit bid, two major items to be replaced under the contract. The record also indicates the Corps knew that the protester's equipment would fit into the station. The specifications named three brand name engines which would meet agency needs including a Colt engine. The chief counsel points out that, by designating specific brand name engines, the Corps admittedly already knew that these three engines would fit in the pump station. We further note that although Colt's restricted drawing provides no equipment dimensions, the contracting officer did not reject Colt's bid because he objected to its sufficiency, but because the drawing contained the restrictive legend.

We therefore sustain Colt's protest. We find that the determination that Colt's bid was nonresponsive was incorrect because the drawing was not required for determination of bid acceptability. We recommend that the contracting officer reinstate the IFB and reevaluate the bids to determine which firm submitted the low, responsive bid and make an award to that firm if otherwise eligible for award.

Colt, the second low bidder, in its comments to the agency report, filed January 2, 1987, there argues, for the first time, that the low bidder, Electricron, may be nonresponsive for a number of reasons such as failing to identify certain equipment in its bid, or may be ineligible for award because on October 20, its parent company was allegedly debarred from government contracting. Since this issue was not raised by Colt until its comments, the agency has not had an opportunity to respond to this issue.

As we have indicated, Electricron's bid (among others) was rejected because it lacked an installation layout drawing which was not needed to determine the responsiveness of its bid. We do not know which firm the Corps will determine to be the low, responsive and responsible bidder eligible for award under a reevaluation of bids under the reinstated solicitation. However, in evaluating the bids, the Army should consider Colt's contentions concerning Electricron's alleged nonresponsiveness.

The protest is sustained.

for Milton J. Fowler
Comptroller General
of the United States