



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Flow Technology, Inc.  
File: B-228281  
Date: December 29, 1987

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### DIGEST

Solicitation called for the submission of bids on a brand name or equal basis, and the brand name manufacturer submitted a bid on its model called for in the solicitation. Award was thereafter made to bidder offering a product which more closely resembled brand name manufacturer's less expensive model, based on agency's different, but reasonable interpretation of purchase description. Since brand name manufacturer's less expensive model was sufficient to meet government's needs, it was prejudiced by specifications which it reasonably interpreted as requiring its more expensive model, and agency should have canceled solicitation and resolicited requirement on less restrictive basis.

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### DECISION

Flow Technology, Inc. (FTI) protests the award of a contract to Flow Management Systems Inc. (FMSI) under invitation for bids (IFB) No. F33659-87-B-0063, issued by the Department of the Air Force for the acquisition of a quantity of liquid flow calibrators. FTI argues that the bid of FMSI is nonresponsive.

We sustain the protest.

The IFB was issued as a brand name or equal solicitation and requested bids on FTI's model No. CT 40-2-0-00056 Comtrack liquid flow calibrator or equal. The calibrator is used to measure the performance of various flow meters which regulate the flow of liquids and gasses into engines. The Air Force's purchase description states, among other things, that the calibrators are to be equipped with calibrator consoles used to operate the mechanism. Specifically, the purchase description states that:

"The calibrator console will consist of an IBM compatible computer with disc storage and a

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complete set of software to operate the calibrator and calculate results from the calibrator data. The computer program shall be designed to accept a wide range of fluid densities and viscosities with simple input of fluid data by the operator."

At bid opening, three bids were received. The low bid of A.O. Grumney Co., Inc. was rejected as nonresponsive, and the second low bid of FMSI, which offered a price of \$129,700 for the first article and \$119,700 each for all subsequent units was accepted as the low responsive bid. FTI bid \$174,000 per unit for all units, having submitted its bid on its brand name model called for under the solicitation.

According to the protester, the bid of FMSI was nonresponsive. Specifically, the protester argues that its calibrator model called for under the solicitation is fully automatic, including control of flow valves which are set by the operator at the control console. In contrast, the calibrator offered by FMSI is fully automatic except that the flow valves must be set manually by the operator rather than being set automatically at the control console. Accordingly, the protester argues that FMSI's bid is nonresponsive with respect to the above-quoted portion of the purchase description which requires that the control console "operate the calibrator." The protester points out that it felt constrained to bid only on its Comtrack model called for in the solicitation but that, had it known that the Air Force did not require the fully automatic model, it could have submitted a bid on one of its lesser models, the Flow Technology Omnitrack liquid flow calibrator, model No. OT-900, which it offered at an approximate price of \$114,000 per unit under a previous solicitation.

The Air Force on the other hand argues that the purchase description did not call for a fully automatic flow calibrator and that, although full automation may be one of the features of FTI's Comtrack model, the purchase description made it clear that this feature was not necessary to fulfill the Air Force's minimum needs and thus it was not prohibited from accepting a less than fully automatic model.

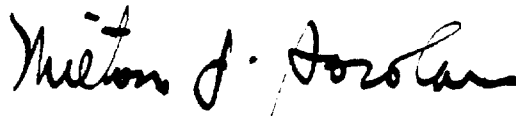
While we cannot conclude that the bid of FMSI was nonresponsive, we think that the solicitation's specifications contained a latent ambiguity. Here, the brand name or equal solicitation called for FTI's fully automatic model and went on in the purchase description to require that the control console "operate the calibrator." We believe that the protester, in reading the solicitation, was reasonably led to believe that it could submit a bid only on its fully

automatic model. On the other hand, the Air Force apparently did not, despite the identification of the fully automatic model as the brand name, intend to require a fully automatic equal product and does not agree that requiring that the control console operate the calibrator means fully automatic absent explicit language to that effect. As we stated in Wheeler Brothers, Inc.; et al.--Request for Reconsideration, B-214081.3, Apr. 4, 1985, 85-1 CPD ¶ 388, an ambiguity exists where two or more reasonable interpretations of a specification are possible. Moreover, a firm's particular interpretation need not be the most reasonable to have a finding of ambiguity; rather, a firm need only show that its reading of the solicitation provision is reasonable and susceptible of the understanding it reached. We conclude in this case that the calibrator requirement, at best, was ambiguous as drafted, that is, susceptible to two reasonable interpretations.

The record further indicates that FTI was prejudiced by the ambiguity in the solicitation. Had FTI known that the Air Force's minimum requirements could be met with its less expensive Omnitrack model, as the Air Force contemplated, the results of the bidding might well have been different. In cases such as this, where the solicitation requirement is ambiguous, with the result that bidders responded to it based upon different, reasonable assumptions as to what the requirement was, the competition has been conducted on an unequal basis. Amdahl Corp., et al., B-212018, et al., July 1, 1983, 83-2 CPD ¶ 51. Moreover, the ambiguity in the specifications may have resulted in less than "full and open" competition since under one interpretation of the agency requirements only a fully automatic calibrator was permissible whereas the Air Force contemplated bids on a less restrictive basis. See Competition in Contracting Act of 1984, 10 U.S.C. § 2304(a)(1)(A) (Supp. III 1985).

Accordingly, by separate letter of today we are recommending that the contract awarded to FMSI be terminated for the convenience of the government and that the solicitation be canceled and reissued so as to eliminate the ambiguity contained in the specifications. See McCotter Motors, Inc., B-214081.2, Nov. 19, 1984, 84-2 CPD ¶ 539.

The protest is sustained.

*for*   
Comptroller General  
of the United States