



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Community Metal Products Corporation

File: B-229628

Date: January 15, 1988

DIGEST

1. Protester's contention that the requirements of specifications for filing cabinet pull handles were erroneous and its bid should be accepted as correct, will not be considered since alleged improprieties in a solicitation which are apparent prior to bid opening date must be filed before that time.

2. Where the requirements of the solicitation represent the government's assessment of the specifications necessary for the procured item to sustain constant use without risk of deformity, a change by the protester is a material deviation rendering the bid nonresponsive.

DECISION

Community Metal Products Corporation (CMPC) protests the rejection of its bid as nonresponsive under solicitation No. 51-PAPT-7-00328 issued by the Patent and Trademark Office of the Department of Commerce for file cabinets. CMPC's bid was determined to be nonresponsive because the cabinets offered failed to conform to the specifications.

We deny the protest.

On July 28, 1987, the Patent and Trademark Office issued the solicitation, which required the drawer pull bar to have a thickness of 1/4 inches by 1/8 inches (.125 inches) in cross section. The solicitation required bidders to furnish detailed technical drawings to show that the product meets the government's specifications. Four bids were received and opened on August 28 but, the low bidder, Atcole Inc., was determined to be nonresponsive. CMPC was the next low bidder at \$163,742.80 but, the contracting officer found its

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bid to be nonresponsive because it offered a drawer pull bar with a thickness of 1/4 inches by .074 inches in cross section instead of 1/4 inches by 1/8 inches (.125 inches) as required by the specifications. The agency awarded the contract to the Interior Steel Equipment Company whose bid conformed to the specifications. Interior's bid was \$170,760, or \$7,017.20 higher.

CMPC contends that, in light of its prior experience and contracts, it determined that the specifications were erroneous and its product offered the best measurements for the drawer pull bar. CMPC also contends that the difference in the measurements is a minor deviation which may be waived or cured and it is able and willing to make any changes the agency requires without affecting the contract price. We do not agree with CMPC's arguments.

With regard to the first contention, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), a protest based on alleged improprieties in a solicitation, such as an erroneous or unduly restrictive specification, which are apparent prior to the bid opening date must be filed before that time. Consequently, CMPC's argument, that the agency's specification for the drawer pull bar was in error, will not be considered on the merits. Mountain Air Helicopters, Inc., B-223099.2, Aug. 6, 1986, 86-2 CPD ¶ 162.

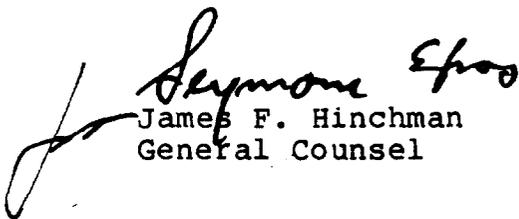
To be responsive, a bid must reflect an unequivocal offer to provide the exact product or service called for in the solicitation so that its acceptance will bind the contractor to perform in accordance with the material terms and conditions of the IFB. Atlas Trading and Supply Co., Inc., B-227164, Aug. 10, 1987, 87-2 C.P.D. ¶ 146. A deficiency or deviation which goes to the substance of a bid by affecting price, quality, quantity or delivery of the article offered is a material deviation that requires the bid to be rejected as nonresponsive. 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, quantity or delivery 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. Mountain Air Helicopters, Inc., B-223099.2, supra.

CMPC admits that its cabinet drawings did not conform to the exact specifications set out by the agency. CMPC contends that the measurements it provided in its drawings will fulfill the requirements of strength necessary for agency use. CMPC does not offer evidence to demonstrate that the agency erred in determining the appropriate specifications for the file cabinet handler. Rather, CMPC points out that

its measurements were acceptable for items in other contracts and that by engineering standards its measurements are adequate. The Patent and Trademark Office maintains that the specifications in this contract were decided upon by assessing the strength necessary to sustain constant use without risk of deformity. Therefore, the measurements of the drawer pull bar go to the quality of the file cabinets the agency wishes to procure as determined by their proposed use. We will not upset an agency's decision as to its needs and the best method of accommodating them absent a clear showing that the decision was arbitrary or unreasonable, since officials of the contracting agency are most familiar with the conditions under which the supplies or services will be used. Tri-States Service Co., B-223165, Aug. 25, 1986, 86-2 C.P.D. ¶ 220. CMPC has not made such a showing here and we find that its bid has a material deviation which renders it nonresponsive.

CMPC asserts that it is willing and able to make the required changes at no additional cost. However, a bidder's intention to comply with the material terms of a solicitation must be manifest from the bid itself and may not be corrected or provided by explanations after bid opening. Mountain Air Helicopters, Inc., B-223099.2, supra. CMPC also asserts that acceptance of its bid would result in a savings of approximately \$7,000 to the government. However, the possibility that the government might realize monetary savings by waiving a material deviation in a bid does not outweigh the importance of maintaining the integrity of the competitive bidding system by rejecting nonresponsive bids. Atlas Trading and Supply Co., Inc., B-227164, supra.

The protest is denied.


James F. Hinchman
General Counsel