

11/24/89



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Can-Am Industries, Inc.

File: B-235922

Date: October 17, 1989

DIGEST

Where awardee under an invitation for bids has made an unequivocal offer to perform the contract and has taken no exception to the terms of the IFB's technical specifications, the firm's bid is responsive.

DECISION

Can-Am Industries, Inc., protests the award of a contract to BMY-Wheeled Vehicle Division of Harsco Corporation under invitation for bids (IFB) No. M67854-89-B-0020, issued by the U.S. Marine Corps for the acquisition of a quantity of super single radial tire (SSRT) retrofit kits for the Marine Corps' fleet of 5-ton trucks. Can-Am argues that the bid of BMY was nonresponsive because it alleges that the product BMY intends to offer does not conform to the wheel assembly specifications.

We deny the protest in part and dismiss it in part.

The IFB called for the submission of bids for the supply of 133 SSRT retrofit kits for the series M-809 5-ton trucks and 133 SSRT retrofit kits for the series M-939 5-ton trucks. The IFB establishes functional specifications for the kits. While the IFB identified a specific part number for the wheels, it also provided that an alternate wheel assembly design which met the purchase description would be acceptable. The IFB also provided for first article testing of the product. At bid opening on May 5, 1989, the Marine Corps received two bids and BMY was the apparent low

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bidder.^{1/} Shortly thereafter, on May 22, the Marine Corps made award to BMY as the low responsible responsive bidder.

The protester alleges that the bid of BMY was nonresponsive because it failed to offer SSRT retrofit kits which are suitable for use on all of the series M-809 trucks. Specifically, Can-Am alleges that BMY offered to supply Motorwheel wheels which have a 17 1/4 inch "bolt hole circle" and that those wheels will not fit certain trucks in the M-809 fleet.

The Marine Corps responds that, contrary to Can-Am's assertion, BMY did not offer to supply Motorwheel wheels or any other specified brand of wheel. According to the agency, BMY simply made an unequivocal blanket offer to furnish the required number of SSRT retrofit kits and that the firm is therefore obliged to furnish wheels which meet the specifications. In addition, the Marine Corps points out that, even were BMY to furnish wheels with a 17 1/4 inch bolt hole circle, those wheels would still fulfill the agency's requirement since it has a substantial (approximately 30 times the solicited amount) number of M-809 series 5-ton trucks which will accommodate the smaller bolt hole circle.

We have reviewed the bid submitted by BMY and conclude that it is responsive to the terms of the IFB. As correctly noted by the Marine Corps, the solicitation does not require, and BMY has not offered to supply, a particular type of wheel in connection with its supply of the retrofit kits. Rather, BMY has simply made an unequivocal offer to supply the requisite number of kits. Thus, BMY has legally obliged itself to supply the kits in exact accordance with the IFB's specifications, and whether it will in fact be able to supply conforming goods is a matter of the firm's responsibility. Roger's Binding and Mailing, B-236176, July 25, 1989, 89-2 CPD ¶ 81.

Where, as here, the contracting officer has determined a firm responsible, we will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith or that definitive responsibility criteria have been misapplied. Keal Cases, Inc., B-233370, Jan. 12, 1989, 89-1 CPDS ¶ 34. Since Can-Am has raised no

^{1/} Can-Am's bid was received after bid opening and the Marine Corps rejected Can-Am's bid as late. However, Can-Am basically claims only it can supply a conforming product and seeks rejection of all bids and resolicitation.

such allegation concerning the Marine Corps' determination of BMY's responsibility, we dismiss this protest ground.

The protest is denied in part and dismissed in part.

for *James F. Hinchman*
James F. Hinchman
General Counsel