



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Armstrong Motorcycles Limited

File: B-238436; B-238436.2

Date: June 5, 1990

John K. Hobbs, for the protester.

John P. Carey, Esq., Paul, Hastings, Janofsky & Walker, for Hayes Diversified Technologies, and William E. Hughes, Esq., Whyte & Hirschboeck, for Harley-Davidson, Inc., interested parties.

C.J. Collins, Jr., Esq., E.J. Stolark, and Robin M.

Swatloski, United States Marine Corps, for the agency.

Guy R. Pietrovito, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Untimely protest allegations that the proposed awardee's bid is materially unbalanced and contained an improper payment term will not be considered under the significant issue exception to the General Accounting Office timeliness rules where these issues are not of widespread significance to the procurement community.

2. Procuring agency reasonably determined that the proposed awardee's offered D-ring motorcycle helmet retention system satisfied the invitation's requirement for a quick-release chin strap, and the protester's mere disagreement with the agency's determination does not establish that the agency's conclusions lacked a reasonable basis.

3. Protest that the proposed awardee will not provide a motorcycle helmet with a face shield, as required, is denied where the proposed awardee unequivocally offered to provide the helmets equipped with face shields in accordance with the requirements of the invitation for bids, and the proposed awardee's descriptive data showed that the offered helmet would be equipped with a face shield.

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4. Proposed awardee satisfied the solicitation requirement for an Environmental Protection Agency certificate of conformity to air emissions standards for its offered motorcycle where the proposed awardee provided the certificate issued to the motorcycle engine manufacturer.

DECISION

Armstrong Motorcycles Limited protests the proposed award of a contract to Hayes Diversified Technologies under invitation for bids (IFB) No. M67854-89-B-0035, issued by the United States Marine Corps, for motorcycles. Armstrong contends that the lower bid of Hayes is nonresponsive and that the IFB requirement that bidders furnish with their bids a certificate of conformity from the Environmental Protection Agency (EPA), certifying that the offered motorcycle complies with EPA air emission requirements, is restrictive of competition. Armstrong also contends that the Corps erred in finding Armstrong's bid to be nonresponsive.^{1/}

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

The IFB, issued November 14, 1989, as an unrestricted procurement, contemplated the award of a contract for base and option quantities of motorcycles with auxiliary equipment, including helmets, tool kits, detachable document carrying cases, and technical manuals. Bidders were informed that the Corps would award a single, fixed-price contract as a result of the IFB and that bids would be evaluated by adding the total price of all options to the price for the base requirement.

^{1/} Armstrong initially protested, before bid opening, to our Office (B-238436) the alleged restrictiveness of the IFB requirement that bidders furnish EPA air emissions certificates of conformity with their bids. Armstrong subsequently submitted its bid without the required EPA certificate. After bid opening, Armstrong timely filed an agency-level protest with the Corps, contending that the bids of Ft. Walton Yamaha, Hayes, and NOSA, Inc., were nonresponsive. After the Corps denied its agency-level protest and determined that Armstrong's bid was non-responsive, Armstrong filed its second protest with our Office (B-238436.2).

The required motorcycle is described as a two-wheeled, dual purpose (on and off road) vehicle to be used by couriers to transport messages, documents, and light cargo, not exceeding 50 pounds. The IFB contained a detailed purchase description which stated function and performance specifications that the offered motorcycles and equipment must meet. In pertinent part, the IFB required bidders to provide "helmets . . . that have face shields, a quick-release chin strap, and meet SNELL 75 or 85 standards," and to provide with their bids an EPA certificate of conformity, certifying that the offered motorcycle met air emissions standards. Bidders were also required to submit descriptive data to demonstrate compliance with stated specification requirements.

At bid opening, the Corps received the following bids:

Ft. Walton Yamaha	\$1,513,052.40
Hayes	\$1,637,414.70
NOSA, Inc.	\$2,077,080.00
Armstrong	\$2,710,010.00
Harley-Davidson	\$2,776,295.30

The Corps found only Hayes' bid to be responsive based upon the agency's technical review of the bids and accompanying descriptive data and therefore proposed to make award to Hayes.

Armstrong asserts that Hayes' bid is nonresponsive to the IFB because: (1) Hayes did not offer a quick-release helmet chin strap; (2) Hayes' descriptive data did not show that Hayes had offered a helmet with face shield meeting SNELL 75 or 85 standards; (3) Hayes submitted an EPA certificate of conformity which was issued to Kawasaki Heavy Industries, Ltd.; (4) Hayes conditioned its bid by requiring payment "net 30" days; and (5) that Hayes' bid was materially unbalanced.

Initially, the Corps argues that Armstrong's protest allegations that Hayes conditioned its bid by requiring payment in 30 days and that Hayes' bid was materially unbalanced are untimely since these issues were not raised in the agency-level protest. We agree.

Our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. See GE Gov't Servs., B-235101, Aug. 11, 1989, 89-2 CPD ¶ 128. Thus, where a protester files a protest on one ground

because it expects that the agency may take an action adverse to its interest, the protester may not delay raising additional protest grounds of which the protester should be aware. See, e.g., Tombs & Sons, Inc., B-206810.4, Aug. 2, 1982, 82-2 CPD ¶ 100.

Here, Armstrong, after its review of bids at the February 7, 1990, bid opening, filed a detailed protest to the agency on February 16, contesting on multiple grounds the responsiveness of Hayes' bid. At that time, Armstrong knew or should have known the basis for its allegations that Hayes qualified its bid by inserting a payment term and that Hayes' bid was materially unbalanced. Armstrong, however, filed only a partial protest with the agency and first raised these new allegations on March 20 in its second protest to our Office. Since Armstrong has offered no explanation, nor do we see one, as to why these issues could not have been raised in Armstrong's protest to the agency, we conclude that Armstrong's piecemeal presentation of these issues is untimely.

Armstrong contends that we should consider these untimely protest allegations under the exception to our timeliness rules for significant issues. See 4 C.F.R. § 21.2(b) (1990). However, we apply this exception only where the protest raises an issue of first impression that would have widespread significance to the procurement community. Microeconomic Applications, Inc.--Reconsideration, B-229749.3, Apr. 26, 1988, 88-1 CPD ¶ 404. Here, the untimely matters raised by Armstrong are not significant issues because they have been previously considered and thus their consideration would only benefit Armstrong. See, e.g., The W.H. Smith Hardware Co., B-220531, Dec. 17, 1985, 85-2 CPD ¶ 681; B.F. Goodrich, B-235953; B-235953.2, Oct. 31, 1989, 89-2 CPD ¶ 403.

With regard to Hayes' remaining protest allegations, the Corps replies that it reviewed Hayes' bid and descriptive data and determined that Hayes' bid was responsive to the IFB. In this regard, the Corps states that Hayes is the incumbent contractor and has supplied a similar motorcycle and identical helmet on the prior contract.

To be responsive, a bid must represent an unequivocal offer to provide the exact thing called for in the IFB such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Only

where a bidder provides information with its bid that reduces, limits, or modifies a solicitation requirement may the bid be rejected as nonresponsive. Oscar Vision Sys., Inc., B-232289, Nov. 7, 1988, 88-2 CPD ¶ 450.

Here, we find that Hayes did not qualify its offer in any way or take exception to any of the solicitation requirements. Specifically, the IFB required bidders to provide helmets equipped with face shields and quick-release chin straps, and meeting SNELL 75 or 85 standards. Hayes offered to provide Bell helmets equipped with face shields and, as a part of its descriptive data, submitted a commercial brochure from Bell Helmets, Inc., and its first article test report from the prior contract, under which it provided the identical helmet.

The Bell Helmets commercial brochure described the helmet's retention system as a "soft-slide D-ring." The Corps states that it considers the D-ring retention system to be a quick-release type chin strap. Armstrong has submitted a letter from someone identified as a motorcycle racer and former owner of a motorcycle parts and accessories supply business who contends that the Bell Helmets' D-ring retention system is not a quick-release type chin strap.^{2/} The agency, on the other hand, has submitted a letter from the director of marketing for Bell Helmets who states that the "soft-slide system is fully padded and is equipped with a quick release tab that allows for quick and easy loosening of the chin strap for easy removal."

While Armstrong disagrees that the D-ring system is a quick-release type mechanism, we have no basis on which to conclude that the agency acted unreasonably in finding that Hayes' bid satisfied this requirement. See Alaska Indus. Resources, Inc., B-236043, Oct. 26, 1989, 89-2 CPD ¶ 382 (protester's mere disagreement with an agency's determination that awardee's bid was responsive to technical specifications does not establish that the agency's conclusions regarding responsiveness lacked a reasonable basis).

^{2/} The protester contends that we should accept this letter as the "affidavit" of an expert in the field of motorcycle helmets and retention systems. We find, however, that this document is not an affidavit since it is not sworn to under oath, under penalty of perjury, or before a notary. Moreover, Armstrong failed to provide us with an original or original signed version of the letter.

Armstrong also contends that Hayes, in its descriptive data, qualified its bid regarding the requirement for a helmet with face shield meeting the SNELL 75/85 standard.^{3/} Armstrong argues that the commercial brochure submitted by Hayes only shows an open-faced helmet and not one with a face shield. We find, however, that Hayes' bid is responsive to the IFB helmet requirements. Hayes states in its descriptive literature that its offered helmet is SNELL 85 approved and will be equipped with a face shield. The Bell Helmets commercial brochure also states that the Bell helmet is SNELL 85 approved and has additional snaps to allow for the attachment of accessories (i.e., face shields). Further, the first article test report for the prior contract, under which Hayes provided the identical helmet, shows that Hayes provided a SNELL 85 approved helmet with face shield. We do not find that Hayes has qualified its bid or taken exception to any of the IFB requirements concerning the helmet. See Tamper Corp., B-235376.2, July 25, 1989, 89-2 CPD ¶ 79.

Armstrong argues that even if Hayes offered to provide a face shield with its helmet there is no showing that the helmet will remain SNELL 75/85 approved with the addition of the face shield. This argument is without merit. The Snell Memorial Foundation, which sets the appropriate standard, has informed us that placing a face shield on an approved helmet will have no effect on the SNELL rating of the helmet, unless the integrity of the helmet was compromised to attach the face shield (i.e., by drilling holes in the helmet). Here, Hayes' face shield is attached by means of existing accessory snaps. In addition, as noted above, Hayes included in its bid its successful first article test report from the prior contract under which it provided the identical helmet and face shield.

Armstrong also protests that the EPA certificate provided by Hayes is invalid since the certificate of conformity was actually issued to Kawasaki, rather than Hayes. Armstrong argues that since Hayes certified itself in its bid as a manufacturer under the Walsh-Healey Public Contracts Act that the certificate issued to Kawasaki does not satisfy the IFB requirement that manufacturers provide an air emissions certificate for the offered motorcycle. Hayes explains that it certified itself as a manufacturer under Walsh-Healey


^{3/} The SNELL standard referenced by the IFB is a helmet safety standard set by the Snell Memorial Foundation, Inc., which evaluates two helmet qualities: impact protection of the helmet and the strength of the helmet retention system (i.e., chin strap).

since, in accordance with Federal Acquisition Regulation § 22.606-1(d), it will perform assembly operations on the motorcycle and that Kawasaki is the engine manufacturer and thus holds the appropriate EPA air emissions certificate.

We find that Hayes satisfied the IFB requirements by providing an EPA air emissions certificate for its offered motorcycle. First, there is no requirement in the solicitation that the EPA certificate of conformity be issued to the bidder. Rather, the IFB certification requirement is directed at the operational capability of the motorcycle (whether it meets EPA air emissions requirements) and not at the ability of a manufacturer to perform in accordance with stated standards. Thus, Hayes satisfied the IFB requirements by providing a valid certificate from the engine manufacturer, demonstrating that the motorcycle will meet EPA air emissions standards.

Because we find that Hayes' lower bid is responsive, we need not consider Armstrong's other allegations concerning the restrictiveness of the EPA certificate requirement and the nonresponsiveness of Armstrong's bid. Armstrong would not be in line for award even if its remaining protests were decided in its favor, and therefore the firm is not an interested party under our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a), 21.1(a), to contest these issues.^{4/} Accordingly, its protests of the restrictiveness of the EPA air emissions certificate requirement and the nonresponsiveness of its bid are dismissed. See Propper Mfg. Co., Inc.; Columbia Diagnostic, Inc., B-233321; B-233321.2, Jan. 23, 1989, 89-1 CPD ¶ 58.

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel

^{4/} Armstrong did not offer an EPA air emissions certificate with its bid and has not alleged that the requirement for the certificate had any effect on its price.