



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: David Grimaldi Company

File: B-244572

Date: October 28, 1991

David Grimaldi for the protester,
Darleen A. Druyun, Natural Aeronautics and Space
Administration, for the agency.
John Formica, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency could not properly disregard unsolicited descriptive literature in a sealed bid procurement, where the literature included with the bid referenced the solicitation number and was addressed to the contracting activity; since the specifications contained in the unsolicited literature reasonably raised a question whether the offered product complied with a material solicitation requirement, the bid was properly rejected as nonresponsive.

DECISION

David Grimaldi Company protests the rejection of its bid as nonresponsive and the award of a contract to Wabash Metal Products, Inc., under invitation for bids (IFB) No. 1-71-2580.2709, issued by the National Aeronautics and Space Administration for a hydraulic molding press.

We deny the protest.

Section C of the IFB called for a hydraulic molding press in accordance with the description, specifications, and work statement. The IFB did not require the submission of descriptive literature or data.

Grimaldi submitted with its bid a cover letter, a 12 page typewritten document entitled "specifications" concerning the product it offered, a schematic of the product, a catalog of hydraulic compression presses manufactured by the firm, and a list of prior government contracts for hydraulic presses performed by the firm.

The agency determined on the basis of the information Grimaldi submitted with its bid that the bid failed to meet

various specifications and requirements of the IFB. The agency concluded, based on the specifications Grimaldi submitted with its bid, among other things, that Grimaldi's press was not capable of operation within the specified range of force. The agency calculated that the press was only capable of a low of 3,848.51 pounds of force, which greatly exceeded the IFB requirement that the press be capable of operating within a range, the low end of which was 100 pounds of force.² The agency thus rejected Grimaldi's bid as nonresponsive.²

Grimaldi protests that because it signed its bid and entered a price, its bid was responsive to the solicitation and thus should not have been rejected. The protester explains that the additional information it submitted with its bid was provided only for the purpose of showing that the firm is a "responsible and experienced" manufacturer of hydraulic presses, and should not have been considered by the agency in determining the responsiveness of its bid. The protester also argues that to the extent it was proper for the agency to consider the additional information, any perceived deviations or ambiguities arising from it were eliminated by

¹Paragraph E.2.b of section C of the IFB states:

"Pressure Control--[The press] [s]hall have at least 4 intervals of platen pressure which shall be internally programmable. Accuracy of pressure control shall be ± 1 percent over a range of 100 to 14,000 pounds with a setability of 100 pounds; and ± 1 percent over a range of 100 to 80,000 pounds with a setability of 1,000 pounds."

The agency notes that the press will be used in studies involving resin transfer molding on materials composed of reinforced graphite. The process involves compacting the materials in the press, injecting liquid resin into the fiber, consolidating the materials, and curing them under pressure as low as 3 pounds per square inch.

²The agency also found Grimaldi's bid nonresponsive because the specifications it submitted indicated that its press did not have temperature controls compliant with the relevant solicitation specifications, and the catalog submitted by Grimaldi with its bid limited the product's guarantee and provided that the press's "[e]ngineering specifications [were] . . . subject to change without notice." We need not address the other reasons given for the rejection of Grimaldi's bid, since we find that the bid evidenced a failure to meet the material requirement of the solicitation that the press be capable of operating at a low of 100 pounds of force.

the statement in the specifications that the press offered "shall meet all the requirements of [the] solicitation . . . including manufacturing, delivery installation, set up, demonstration and training as specified by the solicitation."

Consideration of unsolicited literature in a bid is governed by Federal Acquisition Regulation (FAR) § 14.202-5(f) and § 14.202-4(g), which provide that unsolicited descriptive literature generally should not be considered as qualifying a bid and should be disregarded. The FAR also provides that where it is clear from the bid or accompanying papers that the bidder's intention was to qualify the bid, the literature may not be disregarded. Benthos, Inc; Cygnus Eng'g, B-237454; B-237454.2, Feb. 20, 1990, 90-1 CPD ¶ 295.

The specifications Grimaldi submitted with its bid were addressed to the contracting activity, were headed "SOLICITATION NO. 1-71-2580.2709 GRIMCO MODEL VP-50-13", and stated that "[t]he following description shall include all the characteristics of the . . . [p]ress." Thus, it is clear that the "specifications" were intended to qualify Grimaldi's bid and the agency was required to consider the specifications in determining whether Grimaldi's bid was responsive. Marco Equip. Co.; Scientific Supply Co., B-241329; B-241329.2, Jan. 31, 1991, 70 Comp. Gen. _____, 91-1 CPD ¶ 107, aff'd Midwest Ophthalmic Instruments, Inc., B-241329.3, May, 21, 1991, 91-1 CPD ¶ 490; Moore Special Tool Co., Inc., B-228498, Jan. 29, 1988, 88-1 CPD ¶ 89.

To be responsive, a bid must be an unequivocal offer to provide the exact thing called for in the solicitation, so that, upon acceptance, the contractor will be bound to perform in accordance with all of the IFB's material terms and conditions. If any substantial doubt exists as to whether a bidder upon award could be required to provide the items as specified in the IFB, the integrity of the competitive bidding system requires rejection of the bid as nonresponsive. Benthos, Inc., Cygnus Eng'g, supra. Thus, where unsolicited descriptive literature submitted with a bid reasonably raises questions as to whether the product offered complies with a material requirement of the IFB, the bid should be rejected as nonresponsive. Id.

The specifications submitted by Grimaldi with its bid did not specifically identify the operating range of the press in pounds of force. The specifications did state that the "press is constructed of carbon steel plate with one vertically mounted, double acting cylinder operating at 3,000 PSI [pounds per square inch] maximum." These specifications also provided that the press's hydraulic cylinder is 7 inches in diameter and that the press's

operating pressure can range from 100 to 3,000 pounds per square inch.

From these specifications, the agency calculated that the press offered by Grimaldi had a minimum operating capability of 3,354.51 pounds of force. The agency calculated this by determining the area of the press's cylinder in square inches (38.4851), and multiplying it by the minimum 100 pounds per square inch of pressure at which the press was capable of operating. The agency thus concluded that Grimaldi's bid was nonresponsive because it failed to comply with the solicitation requirement that the press have a minimum operating capability of 100 pounds of force.

Grimaldi argues that its press is in fact capable of operating at a low of 100 pounds of force as required by the solicitation, and that the agency concluded otherwise because it failed to "take into consideration any of the counteracting forces which are inherent to the design of the press."

We have reviewed the specifications submitted by Grimaldi with its bid, and do not find any reference to the "counteracting forces" which Grimaldi now asserts were relevant to the agency's determination. As such, the agency's alleged failure to consider these counteracting forces does not render the agency's interpretation of the protester's specifications unreasonable. Thus, the specifications submitted in Grimaldi's bid reasonably raised questions as to whether the offered press complied with a material IFB requirement and its bid was properly rejected as nonresponsive. Benthos, Inc.; Cygnus Eng'g, supra. The protester's blanket offer to comply with all of the IFB's requirements cannot establish responsiveness, where the bid, including the descriptive literature, indicated that the offered press deviated from a material requirement of the IFB. Id.

The protest is denied.



for James F. Hinchman
General Counsel