

12/10/01



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Adrian Supply Co.

File: B-246611

Date: March 11, 1992

Bob Stormberg for the protester.
Norman E. Lindsey, Esq., and Scott L. Silliman, Esq.,
Department of the Air Force, for the agency.
Daniel I. Gordon, Esq., and Paul I. Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency properly concluded that awardee's bid was responsive, where the bid complied with the only reasonable interpretation of a technical specification in the solicitation, which the protester erroneously assumed should be interpreted differently.

DECISION

Adrian Supply Co. protests the award of a contract for vacuum circuit breakers to Modern Wholesale Electric, Inc. under invitation for bids (IFB) No. F31610-91-B-0049, issued by the Department of the Air Force. Adrian contends that Modern's bid should be rejected as nonresponsive because Modern impermissibly qualified its bid to offer a product which did not conform to the IFB's technical requirements.

We deny the protest.

The Air Force issued the IFB on August 28, 1991. On September 19, Adrian telecopied a series of handwritten technical questions to the agency. The relevant portion of that communication stated that the agency needed to:

"specify which controls, relays, and meters you want. In addition, do you want a reclosing relay? If so, do you want solid state or electromechanical? How many shots is the reclosing relay suppose[d] to take prior to lockout?"

The next day, September 20, 1991, the agency issued amendment 0003 to the IFB. Among other changes, amendment 0003 modified the technical description of the circuit breakers by adding the following language:

"Automatic reclosing relay with lockout switch, 3 shots prior to lockout. Solid state. Phase relays: Time overcurrent relay 1.5 to 6.0A extremely inverse time with 10.40A instantaneous trip. Neutral relay: Time overcurrent relay 0.5 to 2.0A very inverse time with 10-40A instantaneous trip."

Nine bids were received by bid opening on September 30, 1991. The lowest bid was rejected as nonresponsive for reasons not relevant to this protest, and Modern's bid of \$82,500 became the apparent low bid, while Adrian's bid of \$82,890 was next low. Award was made to Modern on September 30, 1991. Adrian first obtained a copy of Modern's bid on October 30, 1991, and filed this protest with our Office on November 12, 1991. Because the protest was filed more than 10 days after contract award, performance has not been suspended.

Modern's bid included a document entitled "Supplement #1," which opened with the words "We quote with the following clarifications and exceptions." The two listed items that are the subject of this protest are the statements: "Assuming that solid state reclosing relays are requested," and "Assuming that electromechanical 50/51 [that is, phase] relays are requested."

From this language, it is clear, and the parties to the protest agree, that Modern's bid is for solid state reclosing relays and for electromechanical phase relays. Adrian contends that the above quoted language added by amendment 0003 means that both phase relays and reclosing relays are required to be solid state, rather than electromechanical. Consequently, Adrian alleges that Modern's stated assumptions impermissibly qualify its bid by offering other than solid state phase relays.

Adrian's protest is based on its interpretation of the IFB's technical requirements, which differs from that of the agency. Where a dispute exists as to the actual meaning of a solicitation requirement, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Romer Labs, Inc., B-243027, June 25, 1991, 91-1 CPD ' 602; Aerojet Ordnance Co., B-235178, July 19, 1989, 89-2 CPD ' 62.

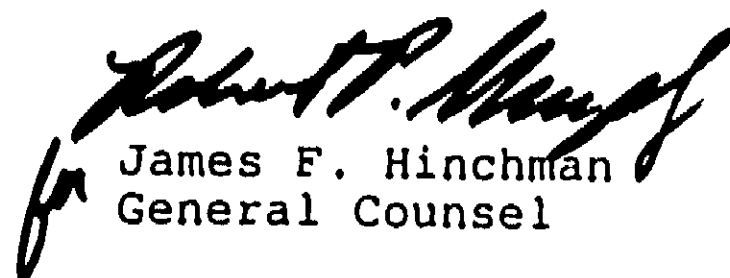
Based on our review of the record before us, including Adrian's questions to the agency before bid opening as well

as the entire solicitation, as amended, we conclude that Adrian's interpretation of the amendment 0003 language is unreasonable. The added technical description clearly did not require that phase relays be solid state. The only reasonable interpretation is that the reference to solid state applies only to reclosing relays, because the technical description addressed reclosing relays, phase relays, and neutral relays seriatim. Thus, just as the phrase "3 shots prior to lockout" could refer only to reclosing relays, so the immediately following words "solid state" also could refer only to those relays. Only afterwards does the description turn to phase relays, and it sets out the agency's requirements for those relays without any requirement that the phase relays must be either electromechanical or solid state. The agency states that either type of phase relay satisfies its needs and, since the IFB does not require one or the other, a bidder could properly elect to provide either electromechanical or solid state phase relays. Modern simply specified in its bid one of the permissible options.

We note that Adrian's position is particularly untenable in view of the fact that the additional technical description in amendment 0003 tracked Adrian's written questions to the agency and was plainly issued in response to those questions. Adrian's written questions asked whether reclosing relays, if desired at all, were to be solid state or electromechanical; amendment 0003 replied by stating that reclosing relays were required and that they must be solid state. Adrian did not ask--and amendment 0003 did not address--whether the phase relays were to be solid state or electromechanical.

Accordingly, the agency properly determined that Modern's bid specifying solid state reclosing relays and electromechanical phase relays was responsive to the IFB.

The protest is denied.


James F. Hinchman
General Counsel