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Gorczycki



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kincaid Equipment Manufacturing

File: B-246079

Date: February 3, 1992

Ed Spexarth for the protester.
Roger Handsaker for ALMACO, an interested party.
Barbara Saulters and Curtis Wilburn, Jr., U.S. Department of Agriculture, for the agency.
Henry J. Gorczycki, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Any bid that does not conform to the specifications as stated in the invitation for bids must be rejected as nonresponsive.
2. A protest of the propriety of an invitation for bids specification is untimely where protested after bid opening.

DECISION

Kincaid Equipment Manufacturing protests the rejection of its bid as nonresponsive by the United States Department of Agriculture (USDA), Agricultural Research Service, under invitation for bids (IFB) No. 14-4431-91 for the purchase of a soybean plot combine to be used at the Delta States Research Center, Stoneville, Mississippi.

We dismiss the protest.

Three bids were received by bid opening on July 3, 1991. The low bid of \$52,860 was rejected as nonresponsive. Kincaid submitted the next lowest bid of \$57,850, which USDA also rejected as nonresponsive. ALMACO submitted a bid of \$61,821. USDA awarded the contract to ALMACO on August 22 as the only responsive and responsible bidder.

USDA ruled Kincaid's bid was nonresponsive because the descriptive literature submitted with its bid, as required by the IFB, indicated that its offered plot combine had a belt driven threshing cylinder, where IFB specifications required a hydrostatically driven thrashing cylinder.

Kincaid alleges that the IFB specifications for the plot combine only called for a variable speed threshing cylinder.

Since Kincaid's bid offered a belt driven threshing cylinder with a vari-speed control, it argues that its bid was responsive to the IFB.

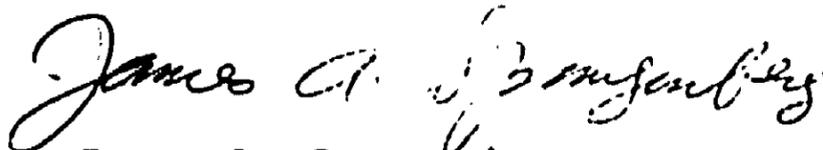
Any bid that does not conform to applicable specifications shall be rejected. Federal Acquisition Regulation § 14.404-2(b). A responsive bid represents an unequivocal offer to provide the exact thing called for in the IFB such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Mechanical Resources, Inc., B-241403, Jan. 30, 1991, 91-1 CPD ¶ 93.

Specification No. 4 at section C of the IFB calls for "[a] hydrostatically driven threshing cylinder with variable speed control." Kincaid's bid admittedly offered to provide a belt driven threshing cylinder. Since Kincaid's combine did not offer a hydrostatically driven threshing cylinder, as the IFB required, USDA properly rejected Kincaid's bid as nonresponsive.

Kincaid alleges that a belt driven cylinder is acceptable for soybean research purposes and is as convenient to operate as a hydrostatically driven cylinder. Kincaid also alleges that, since ALMACO is the only manufacturer of a combine with a hydrostatically driven threshing cylinder, the specification is unduly restrictive of competition.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991), protests against solicitation improprieties apparent prior to bid opening must be filed prior to bid opening. Kincaid's objections to the specification in the IFB concern alleged solicitation improprieties apparent from the face of the IFB and should have been raised prior to bid opening. Kincaid raised this protest only after its bid was rejected. Since Kincaid did not protest the alleged improprieties in the IFB specifications prior to bid opening, we will not consider these grounds of protest. Mechanical Resources, Inc., supra.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel