



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

Bednarz
148648

Decision

Matter of: American Material Handling, Inc.
File: B-250938
Date: March 1, 1993

A. Sid Goss for the protester,
Thomas L. Samsel for Raymond Corporation, an interested party,
Richard A. Couch, Esq., and Vera Meza, Esq., Department of the Army, for the agency,
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where an invitation for bids for truck forklifts required bidders to furnish descriptive literature establishing their offered product's compliance with the specifications, the agency properly rejected as nonresponsive a bid that included descriptive literature showing that the offered product operated on an 80-volt system, while the specifications required that the forklifts be designed for 36 volts, since this conflict rendered the offered product incompatible with the agency's current maintenance and repair system.
2. Protest that solicitation specifications are unnecessarily restrictive is untimely, when the alleged improprieties were apparent from the face of the solicitation, but were not protested until after bid opening.

DECISION

American Material Handling, Inc. (AMH) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAC67-92-B-0039, issued by the Department of the Army, for a sideloading truck forklift. AMH also contends that the IFB specifications are restrictive and reflect a bias toward the awardee's product.

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

The IFB called for one industrial-type, sideloading truck forklift in accordance with the design specifications stated in section C of the solicitation, including a requirement that the forklift operate on a 36-volt electrical system.

Pursuant to Federal Acquisition Regulation (FAR) § 52.214-21, the IFB required bidders to furnish descriptive literature establishing the technical acceptability of their offered product and cautioned that failure to so establish the product's compliance would result in the bid's rejection. The IFB also required bidders to submit with their bids a "Statement of Compliance," certifying their product's compliance with each of the specifications.

The agency received two bids by the August 31, 1992, bid opening date, an apparent low bid from the protester at \$76,870.00, and a next low bid from Raymond Corporation at \$91,214.00. Both bids contained the required statements of compliance and commercial literature describing the respective products, the protester's Kalmar model EFY 30/13/56 ST-FL vehicle and the awardee's Raymond model vehicle. AMH's statement of compliance noted that the offered Kalmar vehicle operated on an 80-volt system, rather than the 36-volt system specified in the IFB. The commercial literature accompanying AMH's bid also described the offered Kalmar vehicle as designed for an 80-volt system. Because the Kalmar vehicle departed from the IFB's 36-volt requirement, the agency rejected the protester's bid as nonresponsive to a material IFB requirement¹ and awarded the contract to Raymond as the next low responsive bidder. AMH contends that its bid should not have been rejected as nonresponsive.

Where an IFB requires descriptive literature to establish the offered product's conformance with the specifications, a bid accompanied by descriptive literature that fails to clearly show such conformance with the specifications must be rejected as nonresponsive. JoaQuin Mfg. Corp., B-228515, Jan. 11, 1988, 88-1 CPD ¶ 15. Here, it is clear that the literature and compliance statement submitted with AMH's bid took exception to, and failed to show compliance with, the IFB's 36-volt requirement. Indeed, AMH admits this is the case.

AMH's position is that an 80-volt forklift system operates identically to a 36-volt forklift system and, therefore, the difference in voltage is not relevant to a bid's responsiveness. The Army responds that an 80-volt forklift is not interchangeable with a 36-volt forklift in the context of


¹The agency's technical evaluation identified at least five other aspects of the protester's offered product that conflicted with a material IFB requirement. We need not address these reasons for the bid's rejection, since the agency could properly base a finding of nonresponsiveness on the offered product's failure to comply with the IFB's voltage requirement alone.

this procurement, since the agency's existing fleet of forklifts operates on a 36-volt system for their maintenance, repair, and battery charging. Because the Army does not have back-up equipment configured for an 80-volt forklift, the protester's offered product cannot be accommodated and does not satisfy the requirements stated in the IFB.

While AMH asserts that the significant price advantage afforded by its bid would more than pay for the cost of installing back-up equipment configured for 80 volts, the government cannot accept a nonresponsive bid, regardless of any cost advantage; it is more important to maintain the integrity of the competitive bidding system than to realize the monetary savings by correction or waiver of material deficiencies in low nonresponsive bids. See Parsons Precision Prods., Inc., B-249940, Dec. 22, 1992, 92-2 CPD ¶ 431. Since the 36-volt system was a material specification requirement to which AMH took exception, the agency properly rejected the protester's bid as nonresponsive.

We dismiss as untimely AMH's contention that the IFB specifications unduly restrict competition in favor of the awardee's product. Under our Bid Protest Regulations, a protest of an alleged solicitation impropriety apparent from the face of the solicitation must be filed, either with the contracting agency or our Office, prior to bid opening. 4 C.F.R. § 21.2(a)(1), (a)(3). AMH's protest of this issue, raised after it learned of the rejection of its bid, is untimely and will not be considered.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel