



Comptroller General  
of the United States

539296

Washington, D.C. 20548

## Decision

**Matter of:** Plateau Electrical Constructors, Inc.

**File:** B-256495

**Date:** June 27, 1994

Frederick M. Cummings, Esq., Jennings, Strouss & Salmon, for the protester.

Lester Edelman, Esq., Department of the Army, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Where the invitation for bids required descriptive literature to establish the offered product's conformance with the specifications, a bid accompanied by descriptive literature that failed to show clearly the offered product's conformance with the specifications was properly rejected as nonresponsive.

### DECISION

Plateau Electrical Constructors, Inc. (Plateau) protests the rejection of its bid as nonresponsive by the United States Army Corps of Engineers pursuant to invitation for bids (IFB) No. DACW57-93-B-0026. Plateau contends that the Corps erroneously determined its bid to be nonresponsive. Plateau also argues that the IFB was designed to limit competition.<sup>1</sup> We deny the protest.

Issued on June 9, 1993, by the Portland District of the Corps of Engineers, the IFB solicited bids for the supply of power transformers, rehabilitation of existing transformers, and replacement of the transformer spray system at Bonneville First Powerhouse, Bonneville, Oregon, on a firm, fixed-price basis. Only two bids were received by the

<sup>1</sup>In its initial protest, Plateau also alleged that the Corps failed to advertise the procurement in the Commerce Business Daily (CBD). However, the agency's protest report included a copy of the April 12, 1993, CBD announcement of this procurement, and Plateau did not address the issue in its comments on the report.

November 30 bid opening date: Plateau's bid in the total amount of \$11,332,653 and ABB Power T&D Company's (ABB) bid in the total amount of \$16,879,888.

Because Plateau's bid was low in price, the contracting officer began a preaward survey to determine whether Plateau was a responsible offeror. Among other things, the contracting officer requested information of Plateau pertaining to the firm's status as a regular dealer of the requested transformers<sup>2</sup> under the Walsh-Healey Public Contracts Act. During this time period, ABB submitted several protest letters to the contracting officer asserting that Plateau's bid should be rejected because: (1) Plateau was not a regular dealer of transformers; (2) Plateau's bid falsely represented that the firm was a small business under the applicable size standard incorporated into the IFB and, therefore, did not include the small business and small disadvantaged business subcontracting plan required of large business bidders; and (3) Plateau's bid took exception to the IFB's technical specifications.

On or about December 13, the contracting officer determined that Plateau was not eligible for contract award because it was not a regular dealer of transformers. The contracting officer forwarded the issue of Plateau's eligibility as a regular dealer under the Walsh-Healey Act, as well as ABB's size status protest, to the Small Business Administration (SBA) for resolution.<sup>3</sup> Pending resolution by the SBA, the contracting officer evaluated Plateau's bid and, on January 28, 1994, determined the bid to be nonresponsive because the descriptive literature submitted with the bid showed that the product offered did not comply with two of the IFB's technical requirements. The Corps notified Plateau that its bid was rejected as nonresponsive by letter of February 3, and Plateau filed this protest in our Office shortly thereafter.

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<sup>2</sup>Plateau certified in its bid that it was a regular dealer.

<sup>3</sup>In this connection, Plateau argues that the contracting officer improperly tried to prevent Plateau from receiving the contract by twice referring matters concerning Plateau's eligibility for award to the SBA. However, this argument is without merit as the contracting officer was required to refer these matters to the SBA in accord with Federal Acquisition Regulation §§ 22.608-2(f)(2) and 19.302(c)(1).

The protester contends that the contracting officer improperly determined its bid to be nonresponsive to technical specifications concerning the insulating transformer oil and the voltage between physically adjacent and touching turns in transformers. The protester states that the contracting officer knew that Plateau intended to supply a product that would meet all requirements set forth in the IFB's technical specifications in spite of the fact that the descriptive literature submitted with Plateau's bid may have appeared to indicate noncompliance with the two requirements. The protester also contends that, even if its bid did not meet all technical specifications, the contracting officer should have waived the bid's noncompliance as minor and awarded the contract to Plateau because acceptance of its bid would save the government \$5,547,235.

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 show clearly such conformance with the specifications must be rejected as nonresponsive. American Material Handling, Inc., B-250938, Mar. 1, 1993, 93-1 CPD ¶ 184. To be responsive, a bid must contain an unequivocal offer to provide the requested items in total conformance with the material terms of the IFB, and any bid which imposes conditions that would modify material requirements must be rejected as nonresponsive. See Lathan Constr. Corp., B-250487, Feb. 5, 1993, 93-1 CPD ¶ 107. A material deviation is one which affects, in more than a trivial way, the price, quality, or quantity of goods or services offered. Id.

Here, the IFB required bids to include descriptive literature to establish the technical acceptability of the offered product and stated that failure of the descriptive literature to show that the offered product conforms to the requirements would require rejection of the bid. The IFB specifically required descriptive literature concerning: (1) test data to verify that the proposed transformer oil conforms to the physical and electrical characteristics of the technical specifications; and (2) the maximum voltage between physically adjacent and touching turns in the windings in the volts.

The IFB required, among other things, that the offered insulating oil have a minimum interfacial tension at 25 degrees centigrade of 40 dynes/centimeter (cm). The Corps reports that transformer oil is required to have an interfacial tension of not less than 40 dynes/cm so that

transformers will have a longer operational life. Plateau's bid included literature from its transformer supplier which stated that a recent test of its insulating oil showed that the insulating oil had an interfacial tension of just 37 dynes/cm.

The IFB also required that the windings of each transformer be designed so that the voltage between physically adjacent and touching turns shall not exceed 1,000 volts. The Corps reports that the requirement for a maximum allowable voltage of not more than 1,000 volts is to ensure safety when operating the transformers.<sup>4</sup> Plateau's bid contained descriptive literature from its transformer supplier which showed that the maximum voltage between physically adjacent and touching turns in the windings would be 2,000 to 2,200 volts, more than double the IFB maximum.

Clearly, the descriptive literature submitted with Plateau's bid failed to show compliance with the technical specifications. Therefore, the contracting officer properly rejected Plateau's bid as nonresponsive in accord with the express terms of the IFB. See American Material Handling, Inc., supra. We note that after the Corps raised questions concerning the responsiveness of Plateau's bid, Plateau submitted a letter from its transformer manufacturer explaining that the descriptive literature submitted with the bid was not intended to take exception to either requirement. For example, the transformer manufacturer stated that the oil test data was provided merely to show that the firm could test insulating oil to determine its interfacial tension but was not meant to indicate that oil with a lower-than-required interfacial tension would be supplied. However, the Corps could not properly consider this explanatory letter because a bid which is nonresponsive on its face may not be converted into a responsive bid by post-bid opening clarifications or corrections. See Lathan Constr. Corp., supra.

Furthermore, the fact that Plateau's nonresponsive bid represented monetary savings to the government is irrelevant since acceptance of a nonresponsive bid would compromise the integrity of the competitive bidding system and is, therefore, not permissible. See American Material Handling, Inc., supra; Amjay Chems., B-252502, May 28, 1993, 93-1 CPD ¶ 426; Trio Graphics, Inc., B-253471, Aug. 27, 1993, 93-2 CPD ¶ 139.

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<sup>4</sup>In its comments on the agency's report, Plateau does not refute the agency's assertion that both requirements are material because they affect the quality of the product. Instead, Plateau merely argues that the Corps has not proved that the requirements are material.

Additionally, Plateau argues that the IFB was structured so that only a contractor with manufacturing and environmental experience like ABB would qualify. For example, Plateau asserts that the IFB required a full performance bond, an unusual requirement for a supply contract. However, this protest alleges improprieties in the IFB which should have been apparent to Plateau from reading the IFR. As this issue was not protested to either the Corps or our Office until after bid opening, the issue is untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1994).

The protest is denied.

*FR*   
Robert P. Murphy  
Acting General Counsel