

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-176731

JAN 30 1973

Dear Mrs. Brooks:

Reference is made to your letter dated December 5, 1972, and prior correspondence regarding the protests of Minster Machine Company (Minster), Fulton Iron Works Company (Fulton), and E. W. Bliss Company (Bliss), against the proposed award of a contract to Cincinnati Milacron Company (CM) under solicitation No. BM 72-50, issued on May 17, 1972, by the Bureau of the Mint, United States Department of the Treasury.

The solicitation calls for a quantity of 15 proof coining presses (manual feed) and includes the following requirements:

"Experience

The prospective bidder shall be a firm regularly engaged for a minimum of five (5) years in the manufacturing of coining presses.

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"Control - Master control station to consist of the following: Power on light, forward reverse keylock selector switch, main motor start and stop buttons, adjusto-speed control, tachometer, clutch slide adjust keylock selector switch, slide raise and lower buttons and keylock off jog, run continuous selector switch. Lube fault and running lights. The operator station to consist of two run, one stop, and one jog push button. NEMA 12 enclosure for controls."

The Bureau received five bids on June 12, 1972, and they were evaluated as follows:

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| 1. Bliss | \$35,983.00 per unit |
| 2. Transmaras Corporation
(Transmaras) | \$36,126.00 per unit |
| 3. Fulton | \$38,810.00 per unit |
| 4. Cincinnati Milacron
(including the addition of
a 6% foreign bid evaluation
factor) | \$38,882.92 per unit |
| 5. Minster | \$48,774.00 per unit |

The Bliss, Transmaras, and Fulton bids were rejected, and the Bureau proposes to make award to CM. Bliss and Fulton have protested the proposed award.

The Bliss bid was rejected due to an exception taken to the specifications. On page 6 of the Bliss bid the following was deleted from the "Control" specification quoted above:

"... clutch slide adjust keylock selection switch,
slide raise and lower buttons . . ."

Bliss contends that these requirements relate only to design and not to mandatory performance characteristics, and therefore its bid should not have been rejected. In this connection, Bliss states that the manual shim adjustment which is offered by Bliss obviates the need for a clutch slide; that the IFB did not require a slide; that the deleted specification is superfluous; and, therefore, its bid complied with the basic requirements of the IFB. Bliss also contends that the use of shims is necessary to produce the clear, sharp impression required and, therefore, any savings in time by use of the clutch slide would degrade the quality of the proof coinage. Furthermore, Bliss contends that it ascertained from visits to United States mints that the clutch slide was not a requirement and that the shim adjustment would satisfy all of the required functions. In the alternative, Bliss contends that the specifications are ambiguous because there is no requirement for a clutch slide but only a requirement for a clutch slide adjustment.

Bliss also contends that since CM has offered a press which will be manufactured in England, award to it would violate the Buy American Act. Finally, it contends that the CM bid did not provide descriptive literature as required by the IFB, and should therefore be rejected.

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The Bureau advises that the coining presses it has previously purchased include a clutch slide and that a clutch slide is required here, otherwise there would be no requirement in the subject specification for the clutch slide control. The Bureau also reports that none of the other bidders questioned or took exception to the requirement. It is also the Bureau's position that the deleted specification is an essential performance characteristic in that it simplifies the setting and locking of the slide and allows for automatic adjustment of the slide after sample coins have been struck. In this connection, we understand that adjustments are often made in thousandths of an inch; that the clutch slide adjust keylock selector switch automatically sets and locks the slide into position; and that the slide raise and lower buttons enable the die setter to automatically adjust the slide to insure proper die setting.

The Bureau estimates that the automatic adjustment of a slide takes 20 to 30 minutes and that due to the limited life of the dies (approximately 2500 strikes), it is necessary to replace the dies and adjust the slide 3 or 4 times each production shift. The Bureau reports that Bliss is offering a press with a manual shim adjustment mechanism in lieu of the required automatically adjusted clutch slide. The Bureau believes that the Bliss manual adjustment mechanism is time consuming in that it would take an additional 10 to 15 minutes to make the necessary adjustments each time the dies are replaced. Since the press operator must wait until the die setter has completed the setting of the dies and related adjustments, valuable production time would be lost unless the Bureau obtains the clutch slide and automated clutch slide adjustment mechanism. In addition to the time saving advantage of the clutch slide, the Bureau also states that use of the clutch slide does not result in a degradation of the proof coinage. It is also reported that neither the contracting officer nor any member of the procurement staff received any inquiries from Bliss concerning the specifications or any changes to the specifications.

We believe that the requirement for a clutch slide control can reasonably be interpreted as contemplating the inclusion of a clutch slide on the equipment. Also, it appears that the clutch slide relates

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to a material performance characteristic and not merely to the design of the press. Although Bliss disagrees with the Bureau's position with respect to the necessity for the clutch slide from the standpoint of producing a clear sharp impression, and efficiency in operation, we must defer to the Bureau's judgment in this respect since our Office lacks the technical expertise to make such decision. Therefore, the exception taken by Bliss to the requirements must be considered a material deviation affecting the quality and price of the proof coin press, thereby rendering the Bliss bid nonresponsive. See FPR 1-2.404-2(a); 30 Comp. Gen. 179 (1950).

We note that with regard to Bliss' contention that the CM bid was nonresponsive for failing to include descriptive literature, the IFB permits waiver of this requirement if (1) the bidder states in his bid that the product he offers is the same as a product he has previously furnished to the Bureau under a prior contract and (2) the contracting officer determines that the product meets the IFB requirements. CM's bid included reference to a prior contract under which it furnished the same equipment, and the contracting officer determined that such equipment conformed. Consequently, CM's bid cannot be considered nonresponsive for this reason. The fact that CM is offering equipment which will be foreign made is discussed elsewhere.

The Fulton bid was rejected for failure to meet the five-year experience requirement quoted above. Fulton contends that it does meet this requirement because (1) in May 1968 it acquired the Ferracute Machine Company's (Ferracute) press product lines, together with inventory, tools and fixtures and it also hired one of Ferracute's mechanical engineers; (2) during 1969 Fulton supplied the Bureau with a 1000-ton hydraulic "Hobbing-Coining Press;" and (3) Fulton employs experienced engineers and has access to engineers of its parent company. In addition, Fulton contends that it has all the engineering "know-how", drawings, and tools to produce the proof coin press. Furthermore, Fulton asserts that a Bureau representative confirmed its capability to produce coining presses with a firm in Massachusetts which has a Ferracute press in its plant.

The rejection of Fulton's bid was based upon information obtained in a pre-award survey. The pre-award survey report dated July 21, 1972, points out that although Fulton acquired the rights to the

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type of presses which are called for here from Ferracuta in 1968, they have not yet manufactured one of this type; that the only press fabricated by Fulton for the Bureau was a 1000-ton hydraulic Hobbing-Coining press; whereas the solicitation calls for a mechanical type press; that the press in operation in Massachusetts referred to by Fulton was manufactured by and purchased from Ferracuta in 1966; and that the only former Ferracuta employee hired by Fulton is a salesman and not a mechanical engineer. For these reasons, a negative recommendation was made by the survey team and adopted by the contracting officer as the basis for concluding that Fulton is not a responsible prospective contractor.

The experience requirement in the subject solicitation goes to the matter of responsibility and our Office has consistently held that the determination of a bidder's overall responsibility is primarily a judgmental determination for the contracting officer, and we will not question the administrative determination unless it lacks a reasonable basis. 45 Comp. Gen. 47 (1965). It is our view that the record in the instant case reasonably supports the determination.

Minster contends that the Bliss, Transmaras and Fulton bids should be rejected for the reasons set forth by the Bureau, and that CM's bid should also be rejected since CM proposes to manufacture the presses in a foreign country and acceptance of its bid would be discriminatory to domestic producers.

In evaluating bids which will result in the acquisition of foreign end products, Federal Procurement Regulations 1-6.104-4(b), promulgated pursuant to the Buy American Act, 41 U.S.C. 101-4, requires that such a bid shall be adjusted for purposes of evaluation by adding to the bid price (inclusive of duty) a factor of six percent of that bid, with an exception not applicable here. As noted previously, CM's evaluated bid of \$38,882.92 includes the six percent factor to its submitted price of \$36,682. Therefore, the CM bid was evaluated in accordance with the applicable regulation.

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Accordingly, there is no legal basis for our Office to object to the proposed award of a contract to CM. The interested bidders have been furnished a copy of this decision.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

The Honorable Mary Brooks
Director, Bureau of the Mint
Department of the Treasury