DECISION

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

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FILE: B-183486

DATE: June 19, 1975

MATTER OF: Essex Electro Engineers, Inc.
Cummins Diesel Engines, Inc.

DIGEST:

Invitation for emergency standby power systems contained specification concerned with horsepower rating of engine needed to drive generator which was subject to conflicting reasonable interpretations. Where invitation so inadequately expresses Government's requirements as to ensnare bidder into submitting nonresponsive bid, invitation should be canceled and procurement resolicited under terms clearly expressing Government's needs.

Essex Electro Engineers, Inc. (Essex), the low bidder under IFB CG-52460-A, protests the rejection of its bid as nonresponsive.

The subject IFB was issued by the Department of Transportation, United States Coast Guard for furnishing five emergency standby power systems in accordance with Coast Guard Specification No. 950, dated December 17, 1974. On the March 4, 1975 opening date 12 bids were received and opened. Essex was low with a unit price of $116,880. The contracting officer determined that the four lowest bidders were nonresponsive in that the engines offered to power the generators did not meet the horsepower requirements of the specification. Two of these bidders offered engines identical to that offered by Essex.

The Coast Guard informed Essex that its bid had been rejected. Counsel for Essex disputed the Coast Guard's evaluation and requested the agency to review its determination. The Coast Guard again evaluated the Essex bid in the context of Essex's arguments as to the responsiveness of its bid and affirmed its determination to reject the Essex bid. Counsel then timely protested to our Office. Cummins Diesel Engines, Inc., has also protested the rejection of its third low bid.

This protest is concerned with the interpretation of the following portion of the engine specification:

"The engine shall have a continuous horsepower rating (as shown by the engine manufacturer's published performance curves) of at least 10 percent and not more than 25 percent in excess

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> of that required to drive the generator and all engine and generator auxiliaries at rated generator speed, when the generator is delivering its full output at rated power factor, all at the altitude and ambient temperatures specified."

The Coast Guard determined that the engine offered by Essex and two other bidders, the General Motors Detroit Diesel 16V71T engine, does not develop sufficient horsepower to meet the specification. This determination was based on the view that "continuous horsepower rating" as required by the specification is equivalent to the manufacturer's horsepower rating for prime power application. Accordingly, tne agency evaluated the engine offered by Essex by using Detroit Diesel Bulletin No. E4-7165-32-2 which indicates a prime power rating of 560 horsepower. This rating is well below the 654 horsepower rating which the Coast Guard calculates as the minimum needed to satisfy the specification requirements.

Essex's position is that in interpreting the horsepower rating requirements of the specification the agency has confused the power rating for standby application with the rating for prime power application and has erroneously assumed that the industry has only one continuous horsepower rating for both applications. In this connection counsel directs our attention to the fact that the specification clearly states in several places that it is for an "emergency standby power system". Further, counsel has supplied this Office with a copy of Detroit Diesel's published performance data and power curves No. E4-7165-32-1 which states that the rated power of the engine offered is 750 horsepower "Guaranteed Within 5%." The data indicates that "This rating applies to engines used for standby electric power systems which must deliver rated power continuously for the interval between interruption and restoration of the normal power source."

In further support of its position, Essex notes that another engine manufacturer, Caterpillar Corporation, in Bulletin LEX 21408 defines continuous horsepower rating differently depending on whether the application is prime power or standby power as follows:

> "Prime Power - for continuous electrical service.
> Standby Power - for continuous electrical service during interruption of normal power."

Finally Essex directs our attention to IFB CG-52,633-A, issued by the Coast Guard for two "Prime Power Systems" in accordance with Coast Guard Specification No. 951, December 23, 1974, as a further illustration of the difference between prime power and standby power systems.

From the above the protester concludes that since the "engine manufacturer's published performance curves show that the 16V71T engine has a continuous power rating of 750 horsepower for the standby systems being procured, the agency's determination that the engine's continuous rating is 560 horsepower is incorrect and the Essex bid is, in fact responsive to the invitation."

We believe that counsel's position has merit. The agency has not provided our Office with any evidence which, in our view, supports its position that the industry considers that the horsepower rating of an engine for a prime power application is always equal to its "continuous" rating. To the contrary, it is our understanding that diesel engines of the type here in question are used in many different applications; to power pumps, to drive generators for prime power or standby power and the like, and that an identical engine model may be rated by its manufacturer at differing horsepower levels depending upon its particular use.

Although the agency insists that the intent of the specification was to obtain an engine rated by the manufacturer for continuous operation it is our view that the specification as it relates to engine horsepower rating is less than completely clear. It appears to us that the phrase "continuous horsepower rating" read in the context of an emergency standby power generating system, may be reasonably interpreted, as Essex and two other bidders did, as meaning a continuous rating for the interval between interruption and the restoration of normal power since as we understand it, a standby unit only operates during such intervals. On the other hand, we do not believe the other bidders who interpreted the specification as requiring a horsepower rating for continuous operation acted unreasonably either. The fact is that the specification as written seems to lend itself to conflicting interpretations.

We have held in similar situations that where a solicitation so inadequately expresses the Government's requirements as to ensnare the average bidder into submitting a nonresponsive bid, the solicitation should be canceled and resolicited under terms which clearly reflect the Government's needs. 52 Comp. Gen. 842, 846 (1973), Science Management Corporation (Decision Studies Group), B-181281, July 3, 1974. As written, the subject specification cannot be considered to clearly express the Coast Guard's stated need for an engine-generator set rated by the manufacturer for continuous operation. The need for the resolicitation of this procurement is illustrated by the fact that the four lowest bidders were determined to be nonresponsive to the engine rating portion of the specification.

In view of the above it is clear that Cummins' protest which concerns the responsiveness of its bid and the nonresponsiveness of the bid of Johnson and Towers, Inc., is moot and need not be considered at this time.

Accordingly, we are recommending by separate letter of today to the Secretary of Transportation that the Coast Guard cancel IFB CG-52460-A and resolicit the procurement in terms which clearly state the agency's requirements for engine power rating.

As this decision contains a recommendation for corrective action to be taken, it is being transmitted by letters of today to the congressional committees named in section 232 of the Legislative Reorganization Act of 1970, Public Law 91-510, 31 U.S. Code 1172.

Deputy Comptroller General
of the United States