

01635

Robert Little.
Proc. II

DECISION



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

FILE: B-186737

DATE: March 25, 1977

MATTER OF: Dominion Road Machinery Corporation -- Reconsideration

DIGEST:

1. Prior decision holding that protester's unsolicited descriptive literature qualified its bid is affirmed.
2. Prior decision holding that bidder was responsive to IFB despite notation in bid schedule that first article testing was not applicable is affirmed since first article testing was required for non-QPL items only and bid indicated that QPL items would be furnished.

Counsel for Dominion Road Machinery Corporation (Dominion) requests reconsideration of our decision Dominion Road Machinery Corporation, 56 Comp. Gen. ___, 77-1 CPD ___ (B-186737, February 4, 1977). There, we held that the low bid submitted by Dominion was nonresponsive because specification sheets which the bidder included with its bid described an item which did not conform to the solicitation specification. We also held that the second low bid submitted by Galion Manufacturing Company (Galion) was responsive despite the insertion of the notation "N/A" on the bid schedule adjacent to the first article test requirements, because first article testing was necessary only for non-QPL (qualified products list) items, and it was clear from the bid that a QPL item was being offered.

Counsel argues that our decision was erroneous, firstly, because we applied an erroneous standard in determining Dominion's low bid to be nonresponsive, and, secondly, because we applied an inconsistent standard in determining Galion's second low bid to be responsive. In evaluating Dominion's bid, Counsel states that our standard was that a bid is nonresponsive if it can reasonably be interpreted as non-responsive on its face. Counsel argues that in applying this standard we "completely ignored" the provisions of ASPR 2-202.5(f) (1975 ed.), which states "that descriptive literature will not be interpreted as qualifying a bid unless the bid clearly shows that the descriptive literature was intended as a qualification." Moreover, in evaluating Galion's bid Counsel argues that we abandoned the standard used in evaluating Dominion's bid and used instead a standard that the bid

B-166737

was responsive because it could reasonably be construed to be responsive. Counsel feels that under this standard Dominion's bid would also be responsive.

We do not agree with Counsel's analysis of our prior decision. Dominion's bid was submitted in letter form rather than on the bid form provided (Standard Form 33). In the cover letter to its bid Dominion stated that it was providing quotes and that specifications on its D-715 motor graders were also enclosed. While the quotes were contained on specification sheets for a "D-715 Motor Grader B-02, it was reasonable to conclude, as the contracting agency concluded, that the general specification sheet for Dominion's "D-715 Motor", also enclosed with the letter bid and expressly referenced in the cover letter, also described the product being offered. Therefore, we held that the specification sheet could not be disregarded in the bid evaluation. In our opinion ASPR 2-202.5(f) does not permit a contracting officer to ignore descriptive literature under these circumstances.

On the other hand, Galion's bid was submitted in the prescribed format. The bidder used Standard Form 33, which was complete in itself. No ancillary or extrinsic documents were submitted. The sole question raised was whether the bidder's insertion of "N/A" adjacent to the first article test items precluded acceptance of the bid. Since first article testing was necessary only if a non-QPL item was to be furnished, there was no reason to reject the bid if the bidder offered to furnish a QPL item not requiring first article testing. We concluded that it was reasonable to read Galion's bid as offering a QPL item because the bidder included information in its bid indicating that its motor grader was a qualified product (a QPL item). We see no reason to alter our conclusion.

Finally, Counsel urges that our Office take steps to insure that Galion delivers QPL items in accordance with our prior decision. Counsel suggests that Galion should be required to commit itself in writing to furnish qualified graders or, otherwise, its contract should be terminated. It remains our opinion, however, that Galion is committed to furnish a qualified grader. No purpose is served by requiring a contractor to furnish written assurance that it will meet the requirements of its contract.

Accordingly, our prior decision is affirmed.


Deputy Comptroller General
of the United States

DOCUMENT RESUME

01635 - [A1051813]

[Reconsideration of Decision Holding Bidder Nonresponsive].
B-186727. March 25, 1977. 2 pp.

Decision re: Dominion Road Machinery Corp.; by Robert F. Keller,
Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services:
Definition of Performance Requirements in Relation to Need
of the Procuring Agency (1962).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).
Organization Concerned: Galion Mfg. Co.
Authority: A.S.P.R. 2-202.5(f).

Counsel for protester requested reconsideration of a
decision that bidder was nonresponsive, claiming that erroneous
and inconsistent standards were applied. The decision was
affirmed since first article testing was not required for
articles to be furnished. (NTW)

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B-136737

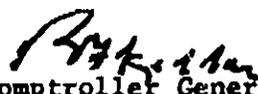
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