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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20541

P. 1112

FILE: B-191005

DATE: May 12, 1973

MATTER OF: Dravo Corporation

DIGEST:

1. Where bidder takes exception to material requirement of specifications in its step-two bid, such bid must be rejected even though bidder was determined acceptable under step one.
2. Where IFB calls for 15 year cathodic protection on hull of vessel and protester offers 3 year protection, and qualification represents a difference in cost of \$20,000, deviation materially affects quality and price rendering bid nonresponsive.

Dravo Corporation (Dravo) protests the award of a contract to Jeffboat, Incorporated, under Invitation for Bids (IFB) No. DACW38-76-B-0005, issued by the Army Corps of Engineers, Vicksburg District. The subject IFB, the second step in a two-step formal advertisement, requested offers to supply a twin-screw diesel towboat and spare parts for the towboat.

Dravo's bid was rejected as nonresponsive for two reasons. First, the agency states that a provision in Dravo's second-step bid materially modified Dravo's step-one technical proposal. The first-step request for technical proposals as amended required a corrosion mitigation system (cathodic protection) with a 15 year life. Although Dravo offered to meet this requirement in its step-one technical proposal, Dravo's second-step bid was revised to offer cathodic protection for a three year life. Secondly, the agency found that a letter dated November 21, 1977, attached to Dravo's second-step bid materially altered some of the terms and conditions

of the solicitation. In view of our disposition of the issue regarding the cathodic protection and the responsiveness of Dravo's bid, we will not address the matters raised by the November 21 letter.

A principal feature of two-step formal advertising is that a second-step bid may be considered responsive only if it is based on a first-step technical proposal determined to be acceptable by the agency. See ASPR § 2-503.2; 45 Comp. Gen. 221 (1965). If the bid deviates in a material way from that technical proposal, it must be rejected as nonresponsive. Norris Industries, B-182921, July 11, 1975, 75-2 CPD 31.

The IFB called for cathodic protection with a 15 year life. As stated in its letter of November 21, Dravo's suppliers had recommended against a 15 year life expectancy. Therefore, Dravo's second-step bid offered 3 year cathodic protection. Dravo contends that this provision did not change the IFB requirement but "only provides an effective performance thereof." Dravo states that it "agreed to provide the Corps with additional metal on a 3-6 year basis, for 15 years protection, as the boat was periodically overhauled."

Even though Dravo states that it will offer equivalent protection, the responsiveness of a bid, that is, the bidder's intent to comply with all IFB specifications must be determined from the bid as submitted. See Sheffield Building Co., Inc., B-181272, August 19, 1974, 74-2 CPD 108. While we have held that deviations which are immaterial and do not go to the substance of the bid may be waived, deviations having more than a trivial or negligible effect on price, quality, quantity or delivery go to the substance of the procurement and may not be waived. Transport Engineering Company, Inc., B-185609, July 6, 1976, 76-2 CPD 10. The Corps states that the 3 year cathodic protection represents a difference in cost of approximately \$20,000. Dravo does not dispute this fact. Since this price difference constitutes approximately 8.7 percent of the difference in the two bids received,

we cannot conclude there was merely a trivial effect on price. See AFB Contractors, Inc., B-181801, December 12, 1974, 74-2 CPD 329. The Corps states that 3 year protection creates a greater potential for damage from rust and corrosion and an increased need for maintenance of the hull. Therefore, we agree that this deviation materially affects the quality of the vessel and may not be waived. For the foregoing reasons, Dravo's bid was properly rejected as nonresponsive. See Transport Engineering Company, Inc., supra.

Dravo states that an award was made to Jeffboat prior to a resolution of this protest without approval at a level higher than the contracting officer as required by ASPR § 2-407.8(b)(2). However, the decision to make an award was concurred in by the Office of Counsel and the Acting Chief Counsel of the Office of the Chief of Engineers. It appears that the Corps substantially complied with the applicable ASPR regulation. In any event, in view of our conclusion on the merits of the protest, we see no reason to question the legality of the award.

The protest is denied.

R. P. K. 11/11/74
Acting Comptroller General
of the United States