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**DECISION**



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

10,803

**FILE:** B-193745

**DATE:** July 20, 1979

**MATTER OF:** Mathewson Corporation

*[Protest Alleging Proposed Awardee's Bid Was Nonresponsive]*

**DIGEST:**

Where IFB requires bidder to furnish letter with bid explaining any modification of bidder's standard model, and where bid without letter offers model having parameters different from parameters of same model previously furnished, bid is responsive, since model proposed is within scope of IFB's definition of standard commercial product because bidder's literature shows that some parameter flexibility is inherent in nature of standard model.

*DLG 82207*

*DL 602209  
DL 602208*

Mathewson Corporation, M&T Harbormaster Division (M&T), protests the Navy's proposed award of a contract to Maritime Industries Ltd. (Maritime), under invitation for bids (IFB) N00123-79-B-0480 issued by the Naval Regional Contracting Office (NRCO), Long Beach, California. M&T protests on the single ground that Maritime's bid is nonresponsive because Maritime failed to enclose, with its bid, a letter explaining alterations which it would make in its standard model L-295 over stern propulsion unit (L-295).

The IFB sought: (1) four 4,500 pound thrust, diesel propulsion units; (2) a 1-year commercial warranty; and (3) technical data in accordance with military specification (MILSPEC) MIL-P-15916E as amended by section "F" of the IFB. The propulsion units are extremely large diesel-driven outboard engines used in moving otherwise nonpropelled floating equipment, such as pontoons and barges.

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At bid opening, the following bids were received:

<u>Bidder</u>	<u>Total Price</u> (Less Transportation)
Maritime	\$300,740
M&T	380,079
Schottel of America, Inc.	516,960

The Navy reports that the three bidders are the only known suppliers of the propulsion units and have collectively met the Navy's requirements for many years.

The present controversy centers about the meaning to be ascribed to the following IFB and MILSPEC provisions:

"[IFB]

"COMPLIANCE WITH SPECIFICATIONS

"It is the responsibility of the bidder/offeror to determine whether the supplies proposed to be furnished under this Solicitation conform to all the required specifications. Accordingly, the bidder/offeror warrants that the designated item(s) conform(s) to all the specifications contained herein, unless it is specifically stated in the bid/proposal wherein the offered article differs from the specifications.

"NOTE: AWARD WILL BE MADE ON A FIXED PRICE SUPPLY CONTRACT FOR ONLY A STANDARD MODEL OR A STANDARD MODEL WITH MODIFICATIONS, WHICH MUST BE EXPLAINED IN DETAIL IN A LETTER SUBMITTED WITH THE BID. THIS IS NOT TO BE A DESIGN OR DEVELOPMENT EFFORT."

"[MILSPEC]

"3.3 Standard commercial product. The propelling unit shall, as a minimum, be in accordance with the requirements of this specification and shall be the manufacturer's standard commercial product with any added

features needed to comply with the requirements. Additional or better features which are not specifically prohibited by this specification, but which are a part of the manufacturer's standard commercial product, shall be included in the propelling unit being furnished. Standard commercial product is a product which has been or will be sold on the commercial market through advertisements or manufacturer's catalogs, or brochures, and represents the latest production model(s)."

In its letter of April 30, 1979, Maritime stated that the L-295 was the same as previously supplied the Navy, in 1976-77, with the exception of smaller engines, clutches and propellers, and a width reduction "from its present 69 ins. to 63 ins." Maritime generally contends that in its industry it is "meaningless to talk of any particular supplied version of any model as 'standard'" principally because each unit is in some way customized to fit each customer's particular requirements. For example, Maritime reports that over the past 10 years it has sold L-295 units with Caterpillar, Cummins, Dorman and General Motors diesel engines. It has sold L-295 units which are 74 inches wide as well as units which are 69 inches wide. Without altering the basic design principles of the L-295, Maritime states that it can reduce the unit's width down to 59 inches.

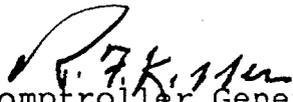
M&T, on the other hand, argues that the reduction from the previously supplied 69 inches to 63 inches constitutes a modification of the L-295 and that a detailed description of such a modification had to accompany Maritime's bid in order for the bid to be responsive.

We do not agree. Since Maritime's bid neither limited, reduced nor modified its obligation to perform, it must be considered responsive. 53 Comp. Gen. 396 (1973).

Furthermore, we believe that section "F" of the IFB (description and specifications), together with the first paragraph of the IFB's "Compliance with Specifications" requirement, set out above, clearly incorporate by reference the MILSPEC's requirement for a standard commercial product which is also set out above. In our opinion, that requirement, which permits inclusion of "[a]dditional or better features which are not specifically prohibited by \* \* \* [the] specification, but which are a part of the manufacturer's standard commercial product," is sufficiently broad to encompass the alteration in the width of the units. Moreover, Maritime's descriptive literature is consistent with its claim that some degree of parameter flexibility is inherent in the nature of its standard model: for example, the horsepower range is described as being "[u]p to 364 HP at 1800 RPM;" propeller diameter is "[t]o 44 in./112cm"; maximum leg lengths are specified; maximum leg lift is specified; maximum steering rotation rates are specified; approximate weight (including the engine) is specified. One sheet of the descriptive literature sets out principal dimensions. On that sheet the width is described at "68-1/2"max." These parameters state the outside limits of the L-295. They do not specify exact absolutes which are simultaneously the minimum and the maximum. In view of the above, we believe that a 63-inch-wide L-295 is Maritime's standard model within meaning of the specifications.

Since a 63-inch-wide L-295 is Maritime's standard model, Maritime was not offering a "standard model with modifications" as that term is used in the IFB. Consequently, there is no basis upon which we can object to the Navy's proposed award to Maritime.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States