



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

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4-0243

B-179642

December 3, 1973

Lieutenant General Wallace H. Robinson, Jr.
Director, Defense Supply Agency

Dear General Robinson:

We refer to letter DSAH-G of November 2, 1973, and prior correspondence, from the Assistant Counsel, Headquarters, Cameron Station, reporting on the protest of The Heil Co. (Heil) against the rejection of its bid under invitation for bids (IFB) No. DSA700-73-B-2735, issued by the Defense Construction Supply Center (DCSC), Columbus, Ohio.

The IFB solicited bids for five refuse shredder/pulverizer systems (CLIN 0001 through 0005) to be in accordance with an attached purchase description, CLIN 0006 of the IFB solicited a price for the first article test requirement and CLIN 0007 for the technical manuals on the equipment.

There was attached to the Heil bid an unsolicited typewritten statement entitled "General Description Portable Heil Refuse Pulverizing System." The first paragraph of the "General Description" stated:

"The eight to twelve ton per hour portable refuse pulverizer to be provided on bid #DSA700-73-B-2735 will consist of the following:

Thereafter followed a one-page description of various features of the equipment.

The Heil description was forwarded by the contracting officer to Warner Robins Air Materiel Area (WRAMA) for comparison with the requirements of the purchase description. WRAMA advised that the general description did not conflict with the purchase description, but it did not include all the requirements in the purchase description.

The contracting officer concluded that it was not clear whether Heil intended to comply with the requirements of the purchase description and that, at best, the general description attached to the bid

PUBLISHED DECISION
53 Comp. Gen.....

[Protest of Bid Rejection]

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created an ambiguity that could not be resolved after bid opening. Further, the contracting officer determined that the failure to submit an acceptable bid on CLIN 0007 also was a justifiable basis for a finding of nonresponsiveness. Additionally, Hammermills, Inc., has contended that the Heil bid was nonresponsive for failure to complete the Buy American Certificate while stating that it would pay an import duty of \$1,350 per unit. The unit prices bid by Heil ranged from \$93,840 to \$94,650.

The administrative report affirms the determination of the contracting officer on the basis that the Heil descriptive data stated that the "pulverizer * * * will consist of the following" (emphasis supplied in report) and what follows did not cover all the requirements. No mention was made in the general description of the control panel, operator's platform, performance requirements, safety and master controls and welding, casting, marking and lubrication requirements. However, although the Heil description does contain the quoted statement and does not cover all the requirements in the purchase description, the information furnished in the Heil description does not deviate from the purchase description requirements on the aspects covered. It is our opinion that the descriptive data was submitted to "highlight" the salient features of the proposed shredder/pulverizer system, not as a means to indicate the limit of what would be supplied. We do not believe that the descriptive data was included with the view of offering something other than what the Government sought to obtain under the specifications. Nor do we believe that Heil, if awarded the contract in question, would have any legal right to supply an item that deviates in any manner from the requirements of the specifications. In B-160474, February 27, 1967, relied on in the administrative report to support the action of the contracting officer, the bidder offered a specific model (by model number) and furnished descriptive data in support of that model. In the instant procurement, the bidder does not cite any model on the bid form so as to restrict the bid to a specific model. Therefore, the immediate case is distinguishable from the above-cited case.

As regards the question of nonresponsiveness of Heil's bid on data CLIN 0007, it was agreed by DSA at the conference held on October 24, 1973, and confirmed by letter of October 31, 1973, that the matter would not be pursued. However, Hammermills, Inc., has contended that the Heil bid was nonresponsive because it was not accompanied by any technical manuals. The requirement for technical manuals to be used with the equipment furnished under the contract is contained in AFAD-71-531-(13) included in the IFB. This specification provides for

correcting any deficiencies in the manuals after the submission of bids. In this connection, we have determined that the failure of manuals submitted with a bid to conform to the manual specification should not render a bid nonresponsive, since the successful bidder is bound by the provisions of the specification to make any changes required by the Government to make the technical manuals submitted with the bid acceptable. See B-178015, October 23, 1973, 53 Comp. Gen. _____. For this same reason, the failure to provide a manual with the bid should not render the bid nonresponsive.

In response to the Buy American issue raised by Hammornilla, we concur in the DSA position that Heil is not offering a foreign product and, therefore, should not have its bid evaluated as a foreign product. Hammornilla contends that Heil's bid is nonresponsive or should be evaluated as a foreign bid because Heil states in Clause D14 that it would pay an import duty of \$1,350 per unit and did not expressly state that it was offering a domestic source end product. However, since Heil did not take any exception to the Buy American Certificate on the reverse side of Standard Form 33, and clearly indicated in Clause D14, by stating "PARTIAL-PARTS ONLY" (underlining supplied), that the import duty of \$1,350 applies only to a rather insignificant part of the end item and not the end item itself, we concur with DSA that the only reasonable interpretation of Heil's bid is that it is offering a domestic source end product within the meaning of the Buy American Act clause incorporated by reference in Clause L01 of the solicitation and it will use one or more foreign components on which it will pay the duty referred to in Clause D14. Therefore, Heil's bid should not be rejected as nonresponsive or evaluated as a foreign bid because of the import duty referred to in Clause D14.

In view of the foregoing, it is our opinion that the Heil bid is responsive. Therefore, it is recommended that the bid be considered for award.

Sincerely yours,

Paul G. Dembling

For the

Comptroller General
of the United States