

DOCUMENT RESUME

02708 - [A1882927]

[Protests against Specifications for Wheel Size and Arrangement]. B-188887. June 23, 1977. 3 pp.

Decision re: Lift Power, Inc.; 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 (1902).

Contact: Office of the General Counsel; Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: Top Line Equipment Co.; Forest Service.
Authority: 4 C.F.R. 20.2(a-b), 20.2(b) (2).

Protester's bid was rejected as being nonresponsive. Their protest against adequacy of specification for forklift truck's wheel size was untimely, but protest concerning rejection of truck for failure to meet four-wheel requirement was timely. Agency improperly rejected truck for this requirement, as solicitation did not specify wheel arrangement. However, truck did not meet wheel diameter requirement; thus, bid was rejected. (Author/DJM)

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John Bronson

Proc. II

DECISION



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

FILE: B-188887

DATE: June 23, 1977

MATTER OF: Lift Power, Inc.

DIGEST:

1. Portion of protest filed after bid opening which concerns adequacy of specification is untimely and not for consideration. Remainder of protest which concerns agency determination that item offered does not meet specification requirement is timely and will be considered.
2. Agency improperly concluded that bid which offered forklift truck with four wheels, two located together, was nonresponsive to IFB requirement that made no mention of arrangement of wheels but required only that truck have four wheels. However since truck offered failed to meet other IFB requirement bid was properly rejected.

Lift Power, Inc. (Lift) protests the award of a contract to Top Line Equipment Company in the amount of \$16,619 by the Department of Agriculture, Forest Service (Forest Service) for an electric powered forklift truck.

The contract was awarded pursuant to IFB R6-77-30 issued on February 18, 1977, by the Forest Service. Five bids were received on the March 22 opening date. The lowest bid was submitted by Lift in the amount of \$15,850. Lift's bid was rejected as nonresponsive because the descriptive literature submitted with its bid revealed that the wheels on the model offered by Lift did not meet the minimums of 16-inch diameter for the drive wheels and 11-inch diameter for the steering wheels as required by the specifications. In addition it is contended that Lift's model does not meet the specification requirement that the trucks be of a four-wheel type since its steering wheels are located side-by-side giving it an appearance of having only three wheels.

By letter dated March 31, 1977, to the contracting officer Lift protested the rejection of its bid. The protest was forwarded to our Office by the Forest Service and the protester has provided us with an additional submission in connection with this matter.

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Although Lift admits that its truck does not meet the specification requirements pertaining to minimum diameter of the wheels it insists that such a requirement is restrictive since it can be met only by trucks manufactured by Clark Equipment Company (Clark). Further, Lift argues that since the reason behind the requirement for minimum diameter wheels is to ensure that the truck has sufficient ground clearance its bid should be accepted as its model has greater ground clearance than the Clark model offered by the awardee. In connection with the requirement that the truck be a four-wheel model Lift argues that the truck it has offered has four wheels as required and is more stable than the Clark model.

Lift's argument regarding the specification requirement for the diameter of the wheels is untimely and not for our consideration. Section 20.2(a) of our Bid Protest Procedures, 4 C.F.R. Part 20 (1976) provides in pertinent part that this Office will consider protests such as the instant one filed initially with the contracting agency provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of our Procedures unless the contracting agency imposes a more stringent time for filing. Paragraph 20.2(b) of our Procedures provides that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening must be protested prior to bid opening. Since the wheel diameter requirements are evident from the face of the solicitation Lift should have protested either to the agency or our Office prior to bid opening.

That portion of Lift's protest which concerns the rejection of its truck for failure to meet the four-wheel requirement is timely since in this instance Lift does not complain that the specification requirement is defective but that its truck was erroneously determined to be nonresponsive to that requirement. The protester was not informed of this basis of his protest until his bid was rejected. See Section 20.2(b)(2) of Bid Protest Procedures, supra.

Paragraph 238 of the specification provides in part:

"Body. Shall be four wheel sit-down type * * *."

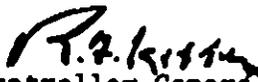
The agency maintains that Lift's model does not meet this requirement because although it does have four wheels they are arranged so that the two steering wheels are together. Accordingly, the agency argues that the requisite stability is not achieved.

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Although the arrangement of the wheels on the model offered by Lift does not appear to satisfy the contracting officer the fact remains that the specification only requires that the truck have four wheels. There is no requirement as to the arrangement of these wheels or the stability of the truck. If the positioning of the two steering wheels together is an unsatisfactory arrangement then the agency must so state in the specification.

Although it appears that the model offered by Lift meets the literal requirement of the specifications as far as its having four wheels is concerned it is clear that the truck offered by Lift did not meet the specification requirement for wheel diameter. Lift's bid therefore was properly determined to be nonresponsive.

We recommend that in the future the Forest Service exercise greater care in drawing up specifications for this item and that if a particular arrangement of the wheels is considered necessary that that requirement be clearly stated.


Deputy Comptroller General
of the United States