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*Stacy*  
*P. 8/78*

**DECISION**



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

**FILE: B-189929**

**DATE: March 9, 1978**

**MATTER OF: Marine Electric Railway Products Co., Inc.**

**DIGEST:**

1. Although protester had difficulties in acquiring specifications of brand name product, protester was not materially prejudiced by delay since it asserts it was low, responsive and responsible bidder and, therefore, entitled to award.
2. Technical determination that bid was not responsive due to failure to meet requirement of detecting hot bearings for both inboard and outboard brakes will not be disturbed, as no evidence exists that such determination was arbitrary or unreasonable.
3. Protester requests action necessary to stop further work pending GAO decision. GAO has no authority to order such action.

The Department of Transportation, Transportation Systems Center, issued invitation for bids (IFB) No. TS-379-GJ for a Hot Box Detector/Wheel Safety Monitor System, Servo Model No. 8905, or equal, and eight ancillary items, with an original bid opening date of May 16, 1977. By amendments the opening date was extended to June 28, 1977. Two bids were received-- one from Marine Electric Railway Products Co., Inc. (MERP), and the other from Servo Corporation of America (Servo). The low bid, from MERP, was declared nonresponsive, and award was made to Servo on August 15, 1977.

MERP has protested to our Office on the grounds that it was able to obtain the Servo specifications, needed to determine the requirements of an "or equal product," only after resort to the Freedom of Information Act, that it was the responsive, responsible low bidder and that it should, therefore, have received the award. The protester also requests that our Office issue a stop-work order to stop further work under the contract awarded to Servo.



B-189929

With reference to the first allegation, MERP has stated that it attempted to obtain the necessary specifications of the Servo Model 8909 in order to bid an "or equal" product. Apparently, MERP was hindered in obtaining this information and thus filed a request under the Freedom of Information Act. MERP concedes that it did obtain the information prior to the amended bid opening date and it submitted its bid prior to the new deadline. The agency states that one of the reasons for extending the due date was to satisfy MERP's request that it be given more response time. Notwithstanding MERP's obtaining the information and submission of a bid, it apparently still believes it was prejudiced by its difficulties in obtaining the specifications. Even if this basis of protest is timely, and there is some question of its timeliness, we do not feel that MERP's competitive position was materially prejudiced since MERP asserts that it is the low, responsive and responsible bidder and, therefore, should have been given the award.

Among the salient characteristics of the solicitation, it was required that the system procured be able to detect hot bearings and sticking brakes for both inboard and outboard bearings. The Department of Transportation has determined that MERP's bid, including narrative, brochures, and drawings, does not refer to the capability of the product offered to detect inboard hot bearings. In fact, one product brochure submitted contains a paragraph which was interpreted to imply that the system cannot detect conditions for both inboard and outboard bearings.

Further, certain of MERP's descriptive comments were found to be ambiguous and not in conformance with the salient characteristics of the solicitation. MERP's comments regarding the bearing discriminator were determined to be incompatible with each other, and neither met the salient characteristics. The schematic diagram showing the absolute differential alarm system did not indicate whether its adjustable settings for both absolute and differential alarm settings applied to both roller bearings and journal bearings, as required. The plan drawings submitted by MERP contained discrepancies in that spacing requirements of advance turn-on transducers were different, and a statement in the Wheel Monitor text, indicating that the bearing wheel transducer had been moved closer to the scanner head, was not shown.

B-189929

As a result of the ambiguities and discrepancies in MERP's bid package, it could not be determined exactly what MERP proposed to furnish, and whether the product offered met the salient characteristics. Consequently, MERP's bid was determined to be technically nonresponsive.

The major deficiency in MERP's bid was its failure to propose a product with the ability to detect conditions for both inboard and outboard brakes. The solicitation clearly contained such a requirement. The technical determination that the bid failed to meet this requirement is borne out by MERP's later written assertions that no known current piece of equipment could read both inboard and outboard bearings, which is, in effect, an admission that MERP's detector is incapable of reading inboard bearings. MERP does not assert that it could have met this requirement if it had more time to prepare its bid after receipt of the specification material.

MERP has alleged that Servo's equipment, too, will not meet the solicitation requirement of reading inboard and outboard brakes. However, Servo has provided written evidence that its detector does have this capability, and the technical evaluation has found its bid responsive.

The overall determination of the technical adequacy of bids is primarily a function of the procuring agency. Therefore, the contracting officer has a reasonable amount of discretion in the evaluation of bids. Harding Pollution Controls Corporation, B-182899, July 3, 1975, 75-2 CPD 17; The BLK Group, Inc., B-178887(2), April 10, 1974, 74-1 CPD 183. The judgment of the technicians and specialists of the procuring agency as to the technical adequacy of bids or proposals submitted in response to the agency's statement of its needs will generally be accepted by our Office. Metis Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44; 52 Comp. Gen. 382 (1972). Such determinations will be questioned by our Office only upon a clear showing of unreasonableness, an arbitrary abuse of discretion or a violation of the procurement statutes and regulations. Data 100 Corporation, B-182397, February 12, 1975, 75-1 CPD 89; Ohio State University; California State University, B-179603, April 4, 1974, 74-1 CPD 169.

B-189929

It appears from the record that MERP's bid was evaluated in accordance with the specifications and was found to be technically deficient. It was a clear and material requirement that the detector read both inboard and outboard brakes. The technical evaluation disclosed that MERP's bid did not propose to do so. Moreover, the record shows that, in fact, MERP has impliedly conceded that its product could not meet this requirement, and Servo has provided evidence that its detector does have the required capability. Thus, the record supports the technical determination that MERP's bid was nonresponsive and we are unable to conclude that the Department of Transportation's rejection of MERP's bid was arbitrary or unreasonable.

Finally, concerning the protester's request that we issue a stop-work order, our Office has no authority to order such action. Pharos, Inc., B-188454, July 13, 1977, 77-2 CPD 19.

For the above reasons, the protest is denied.

*R. F. Kimm*  
Deputy, Comptroller General  
of the United States