



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

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B-178666

August 8, 1973

Keco Industries, Incorporated
2438 Beekman Street
Cincinnati, Ohio 45214

Attention: Mr. George W. Andrews
Executive Vice President

Gentlemen:

Further reference is made to your letter of May 12, 1973, and subsequent correspondence, protesting against any award of a contract to Harvey W. Hottel, Incorporated, under invitation for bids (IFB) No. DSA 400-73-D-7545, issued by the Defense General Supply Center (DGSC), Richmond, Virginia. Your sole contention is that Hottel's failure to acknowledge an amendment to the invitation for bids should have resulted in the rejection of its bid as nonresponsive.

The contracting officer has described the circumstances underlying your protest as follows:

Subject invitation for bids (IFB) was issued on 26 March 1973 * * * inviting offers on, inter alia, 75 Air Conditioners, FSN 4120-951-0948. These 75 units were designated as item 0001 and were to be delivered, F.O.B. destination, New Cumberland Army Depot, New Cumberland, Pennsylvania. In addition to the 75 air conditioners, prices were also solicited for an "initial production test" as item 0002 and for a "First Article Test Report" as item 0003. These are the only units under the solicitation which are germane to this protest. Although another 60 air conditioners, FSN 4120-974-7206, with attendant tests and data were solicited as items 0004 through 0017, the unacknowledged amendment made no changes in the solicitation requirements covering these units.

Amendment 0001 was issued on 11 April 1973 * * *. The only effect of that amendment on the units herein involved was to divert one unit of the 75 air conditioners, FSN 4120-951-0948, from the New Cumberland Army Depot to the U.S. Army Troop Support Command, St. Louis, Missouri. In short, the amendment would require the contractor to deliver 74 units to New Cumberland, Pennsylvania and one

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(1) unit to St. Louis, Missouri. The unit to be delivered to the Troop Support Command is designated as item 0018 of the amendment and is to be utilized by that activity as a "maintenance capability modul." However, the contractor would not be required to perform any testing or incur any further obligation beyond mere shipment to that activity.

Bids were opened on 25 April 1973. Three bids were received * * *. The low bidder, Harvey W. Hottel, Inc. bid at a total price of \$244,450 for items 0001, covering the 75 units, through 0003 but failed to return amendment No. 0001. Hence its bid was predicated on delivery of all 75 units, FSN 4120-951-0948, to New Cumberland. Keco bid a total \$275,560 for the same 75 units and tests * * *. Keco returned amendment No. 0001 and consequently bid to deliver 74 units to New Cumberland, Pennsylvania and one (1) unit to St. Louis, Missouri. The third bidder, The Trane Company bid at \$324,250 for the three items in question. Hottel's bid is \$31,110 lower than that of the protestant, Keco.

The total amounts bid were as follows:

The Trane Company	\$562,859
Keco Industries, Incorporated	460,060
Harvey W. Hottel, Incorporated	423,976

The statement of the contracting officer contains a mathematical error in that Keco's bid for the 75 units and tests was \$265,560. Therefore, Hottel's bid was \$21,110, not \$31,110, lower than Keco's bid with regard to these items. However, we believe that this error does not materially affect the validity of the contracting officer's conclusions, described below.

In response to an inquiry after bid opening, Hottel alleged that it had never received Amendment 0001 and confirmed that its price for the one unit diverted from New Cumberland, Pennsylvania to St. Louis, Missouri, remained unchanged. The contracting officer was of the opinion that:

The only possible price advantage that Hottel could enjoy by presumably not having considered the amendment in formulating its bid price, would be the insignificant saving represented by the difference in freight costs on shipping one (1) unit from Rockville, Maryland to New Cumberland, Pennsylvania, rather than to St. Louis, Missouri.

The DGSC Traffic Management Branch advised the contracting officer that this saving would be approximately \$20. In view thereof, the contracting officer regarded Hottel's failure to acknowledge receipt of the amendment as having, at most, a trivial or negligible effect on price. Additionally, in view of the differential in bid prices, the contracting officer concluded that Hottel's failure to acknowledge the amendment could not affect the competitive standing of the bidders. Hottel's failure to acknowledge the amendment was therefore considered to be a minor informality or irregularity pursuant to Armed Services Procurement Regulation (ASPR) 2-405(iv)(3), and in view of the urgency of the requirement, award was made to Hottel prior to resolution of the protest by our Office, as permitted by ASPR 2-407.8(b)(3).

We agree with the contracting officer. The only change in requirements made by Amendment 0001 was that one air conditioning unit which would have been shipped to New Cumberland, Pennsylvania, was diverted to St. Louis, Missouri. There is nothing of record to suggest that this change in destination had a potential cost impact upon any of the bidders in excess of \$50, and in Hottel's circumstances, it was approximately \$20. In view of the total contract price of \$423,976, and the total difference of \$36,094 between Hottel's low bid and yours, we are of the opinion that Hottel's failure to acknowledge the amendment was properly considered a minor informality. See B-176963, February 22, 1973 (52 Comp. Gen. 514).

You have contended, however, that the failure to acknowledge the amendment gave Hottel an option after bid opening of assenting to the change made by the amendment or of successfully resisting award by asserting its own nonresponsiveness. We do not agree. A bid which contains only a minor informality or irregularity is a responsive bid and may be considered for award in accordance with ASPR 2-405. Therefore, we do not believe Hottel was in a position to refuse the award merely on the basis of its failure to acknowledge the amendment.

Accordingly, your protest is denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States