



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

31116

B-175028

JUN 26 1973

The Honorable Arthur F. Sampson
Acting Administrator
General Services Administration

Dear Mr. Sampson:

As a result of an inquiry from the Chairman, Government Activities Subcommittee of the Committee on Government Operations, House of Representatives, we have reviewed our decision B-175028, April 26, 1972, involving the protest of The Black & Decker Manufacturing Company (B&D) against award to any other bidder of a contract for Item 6 (FPM130-889-0993 Drill) under invitation for bids (IFB) No. FPMTP-85-41001-A-1-17-72, issued December 14, 1971, by the Federal Supply Service.

Rockwell Manufacturing Company (Rockwell) was the apparent low bidder on item 6 of the IFB. However, B&D offered lower prices on an "all or none" basis for items 2, 3, 4, 5, 6, 12 and 13. B&D contended that Rockwell's bid was nonresponsive because the firm had included an uncollected model number in a letter accompanying its bid, thereby rendering the bid ambiguous. We sustained the protest and B&D was awarded the contract. Performance under the contract has been completed.

Based on a reconsideration of the record, including supplemental information recently received, the decision of April 26 is overruled.

The pertinent facts are restated from our decision of April 26, 1972. The IFB provided for the submission of preproduction samples, as follows:

The Government reserves the right to waive the requirements for preproduction samples as to those offerors offering a product which has been previously procured and approved by General Services Administration under the same specifications applicable to this procurement. Offerors offering such products are requested to furnish with their offers information identifying the product by citing the number, date and item of the purchase order and/or contract number involved in such prior purchase.

Attached to Rockwell's bid was a letter requesting waiver of the requirement for providing preproduction samples.

UNCLASSIFIED DECISION
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The letter stated, in pertinent part;

In the event that Rockwell Mfg. Co. is awarded a contract for item 6 or item 10, or item 13, this letter is to request a waiver of preproduction samples for the following reason:

Item 6: PSN 5130-889-0993 Drill (RMC Model 754G2). This machine similar to PSN 5130-293-1386 Drill now being furnished on GSA term contract GS-008-89548 (March 1, 1970-Terms February 29, 1972) except for filter for suppression.

The then current Rockwell catalog listed an RMC model 754, but not a model 754G2. The contracting officer stated that an examination of the operating characteristics of model 754 as set forth in the catalog indicated no deviation from those stated in IFB specifications. However, there was no mention in the catalog reference to model 754 of two specification requirements: (1) suppression of electromagnetic interference; (2) treatment to resist fungus growth. Notwithstanding this lack of reference to the two requirements, the contracting officer felt that there was no ambiguity in the bid and that Rockwell was indeed offering a drill in strict accordance with the IFB specifications. It was our view, however, that the bid was ambiguous because there was no basis for determining that the model 754G2 met the specifications.

Subsequent to our April 28, 1972, decision, we were furnished the detailed specifications governing the drill previously supplied by Rockwell and the drill covered by the IFB. A comparison of the specifications and the schedule description for the IFB drill with the detailed specifications covering the drill previously supplied by Rockwell (PSN 5130-293-1386) indicated that the specification requirements for both drills are the same, except that the prior drill did not have to be suppressed for electromagnetic interference or treated for fungus control.

Viewed against this background, we now believe that Rockwell's parenthetical identification of a model number in its bid cover letter can reasonably be viewed only as a representation that its model 754G2 conforms to the IFB specifications. The inclusion of an unsolicited model number may create a question, but it is clear that " * * * the mere inclusion of numbers in a bid should not constitute an automatic finding of nonresponsiveness and * * * our Office should judge each case on its merits * * *." B-170908, March 5, 1971. Further, we should not ignore the purpose for which the bid cover letter was

written—namely, obtaining waiver of first article testing. In this context, we believe that Rockwell equated its model 754G2 to the FSN 5130-889-8993 drill called for by the IFB. Rockwell further noted in the letter that "this machine," referring to both its model 754G2 and the drill called for by the IFB, was "similar" to the previously furnished drill, except for suppression of electromagnetic interference. The fair import of this statement is that the model 754G2 would have a filter for suppression. The only remaining difference between the drill called for by the IFB and the previously furnished drill was the requirement that the former be treated to control fungus. In the circumstances, we do not believe that the reference for preproduction waiver purposes to the model supplied earlier without mention of fungus control may reasonably be construed as an exception to the fungus control requirement. Therefore, we conclude that acceptance of Rockwell's bid would have obligated it to furnish a conforming drill notwithstanding the gratuitous model designation and the bid should have been regarded as responsive.

Sincerely yours,

PAUL G. DEMBLING

Acting

Comptroller General
of the United States