



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

31217

W-178046

July 25, 1973

H & H Sheet Metal Manufacturing Corp.
31 Coffey Street
Brooklyn, New York 11231

Attention: Mr. Leon Nerskovits
President

Gentlemen:

We refer to your letter of February 13, 1973, concerning your protest against the award of a contract to Stacor Corporation on February 5, 1973, for ten items under Solicitation No. FPMGG-V-29180-A-12-7-72, issued by the General Services Administration (GSA) on November 7, 1972.

You maintain that GSA should not have decided that your low bid was nonresponsive because it made reference to model numbers. For the reasons discussed below, we must agree with GSA's decision.

The solicitation was issued to cover requirements for certain laboratory equipment from May 1, 1973 (or date of award), to April 30, 1974. Although 28 firms submitted bids on the various items covered by the IFB, only 2 firms, your company and Stacor, submitted bids for the 10 items in question (49 through 55, 58, 59 and 62). You inserted the following unsolicited model numbers after the indicated items:

<u>Item</u>	<u>Bidder Inserted Model Number</u>
49	EC 3748
50	EC 3760
51	EC 3772
52	EC 4360
53	EC 4372
54	EC 3760A
55	EC 3772A
58	TR 2025
59	TR 2436
62	TR 3648

GSA reports that the contracting officer had to reject your bid since he had no way to determine whether each item being offered as a referenced model number complied with the requirements. In this connection, GSA states:

[Handwritten notes and stamps at the bottom of the page, including a date stamp '730720' and a large handwritten number '091427'.

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We are informed that our contracting officer checked with our National Buying Center, Federal Supply Service, and also with the Quality Control representative of Region 2 where the bidder's plant was located. Our contracting officer was unable to locate any catalog which contained the applicable model numbers.

You state that you will not take any exceptions to the specifications, and that you should have therefore received the award.

We have held that the insertion of unsolicited model numbers in a bid creates an initial ambiguity as to whether the bidder has agreed to submit items conforming with all specifications. 50 Comp. Gen. 8 (1970). The ambiguity may be clarified either by the presence of an express statement in the bid that the models conform with all requirements or by the contracting officer's evaluation of data, available to the Government prior to bid opening, which shows such conformity. See B-170908, March 5, 1971.

You did not submit an express statement with your bid that your models would comply with the requirements. Nor was the contracting officer able to resolve the ambiguity in your bid since he did not have data, available prior to bid opening, demonstrating that your models complied with the requirements.

Although you inserted the same model numbers in your successful bids for identical items in 1968, 1970, and 1971, the contracting officer reports that he did not have this information prior to award. Further, this information, in our opinion, does not conclusively show that your current models conform with all requirements of the subject IFB without assurance that your models have not been modified since 1971. In this regard, GSA could not have questioned you after bid opening about the current acceptability of your model. Reliance on any explanation furnished by you in this situation would give you an option to affect the responsiveness of your bid and would therefore be detrimental to the competitive bidding system. 36 Comp. Gen. 705 (1957).

In these circumstances, we think GSA's rejection of your low bid was proper, notwithstanding your statement that you are a small business employing 90 percent minority workers. We must therefore deny your protest.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General
of the United States