



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: CNC Company
File: B-239328
Date: July 30, 1990

Roy M. Smith, for the protester.
Bruce Wolski, for F.S.E., Inc., an interested party.
George N. Brezna, Esq., Department of the Navy, for the agency.
George Ruppert, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where a brand name or equal solicitation required submission of descriptive literature sufficient to establish that the offered item conforms to the salient characteristics and bidders were advised that failure to do so would require rejection of their bids, the procuring agency properly rejected as nonresponsive a bid that included descriptive literature which failed to show compliance with several salient characteristics.

DECISION

CNC Company protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. M00681-90-B-0007, issued by the Department of the Navy for dishwashing equipment at the Marine Corps Base, Camp Pendleton, California. CNC's bid was rejected because the descriptive literature it submitted did not adequately demonstrate compliance with several salient characteristics of the IFB. CNC maintains that its bid adequately indicated that its offered products were equal to the brand named and that its bid therefore was responsive.

We deny the protest.

The IFB called for the purchase and installation of a Gates Manufacturing model SD-SBC10-RW-40-E-SB dish sorting conveyor system, or equal, and a Somat Corporation Model SPC-50AS-Under-Dish-Table remote waste pulping system, or

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equal. The IFB required that bidders submit with their bids descriptive literature demonstrating that the product the bidder intended to furnish complied with the specifications and all brand name item salient characteristics; the IFB advised that failure of the literature to clearly indicate compliance with the specifications would result in the rejection of the bid. The IFB also stated that missing or clarifying data would not be accepted after bid opening.

Five bids were received. The low bid was rejected as nonresponsive. CNC's second low bid of equal items also was rejected as nonresponsive for failure of the bid or literature to demonstrate that the offered sorting conveyor system satisfied several salient requirements. Specifically, the contracting officer found that CNC's bid did not address: (1) the requirement that the conveyor belt have slats clearly identified as master chain links; (2) the requirement that the conveyor belt be a Rexnord series LF1873-TAB-SS-K10, or equal; (3) the requirement for slider shoes at the conveyor belt tail pulley and the conveyor belt head pulley, a safety feature; (4) the requirement for a "sensor bar, safety switch activator mechanism," another safety feature; and (5) the requirement that the conveyor have a belt linkage slot in the center of the slider pan to prevent food debris from falling through to the return belt and drain pan. The Navy thus made award to the next low bidder, F.S.E., which offered the brand name items.


To be responsive to a brand name or equal solicitation, bids offering equal products must conform to the salient characteristics of the brand named equipment listed in the solicitation. A bidder must submit with its bid sufficient descriptive literature to permit the contracting agency to assess whether the equal product meets all the salient characteristics. See TriTool, Inc., B-233153, Jan. 25, 1989, 89-1 CPD ¶ 84. Where descriptive literature is required to establish conformance with the specifications, and bidders are so cautioned, the bid must be rejected as nonresponsive if the literature submitted fails to show clearly that the offered product conforms to the specifications. Joaquin Mfg. Corp., B-228515, Jan. 11, 1988, 88-1 CPD ¶ 15.

CNC's bid and literature clearly did not demonstrate that the offered equal item met all salient characteristics specified in the IFB; the several features listed above, set forth in the IFB as requirements for the conveyor system, simply were not addressed in the descriptive literature furnished with CNC's bid.

It is CNC's view that the agency either should have requested additional literature or information concerning the perceived deficient areas, or should have accepted CNC's bid for award and then exercised its right to inspect the items for conformance to the IFB at the time of delivery. Under the applicable legal standard set forth above, however, neither suggested an alternative would have been proper. Again, where, as here, the acceptability of an equal item is to be determined based on a comprehensive descriptive literature requirement, the determination must be based on literature and information submitted with the bid; if the materials submitted do not show conformance with specified salient features, the bid must be rejected as nonresponsive. JoaQuin Mfg. Corp., B-228515, supra. The IFB specifically warned CNC that bid rejection would be the consequence of failing to submit adequate literature with its bid.

CNC also complains that award was made to F.S.E. despite the fact that the literature accompanying its bid also did not address certain salient features. F.S.E. offered the brand name items, however, and thus was not required to submit literature to establish conformance with the requirements.

The protest is denied.


for James F. Hinchman
General Counsel