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DECISION



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

50544

FILE: B-181473

DATE: February 13, 1975

MATTER OF: McGraw-Edison Company

DIGEST:

1. Rejection of bid as nonresponsive for failure to furnish sufficient descriptive literature was proper even though bidder claims agency personnel had prior knowledge of its product and even though sufficient information was furnished after bid opening as it is fundamental rule of competitive bidding that responsiveness must be determined from contents of bid at time of bid opening.
2. Invitation for bids which required descriptive literature but which only stated in general terms nature and extent of data desired, was defective because it failed to comply with FPR 1-2.202-5 requirement that descriptive data clause specify in detail those components about which data desired and type of data desired. Since no protest concerning such provision was made before or after bid opening, and contract has been performed, no remedial action is possible. However, agency advised to prevent recurrence of use of such provision.

On August 9, 1974, the District of Columbia, Department of General Services, issued invitation for bids (IFB) 1059-AA-62-1-4-RB, for the procurement of three items of various types and quantities of high pressure sodium vapor luminaries, to be supplied in accordance with specifications provided as part of the IFB, with incremental deliveries scheduled 21, 30, 60, and 90 days after date of award. The invitation required that bidders submit descriptive literature as part of their bids. The invitation also provided that failure of the descriptive literature to show that the product offered conformed to the specifications would require rejection of the bid. On August 23, 1974, 6 bids were received and opened. The descriptive literature submitted with the bids was evaluated by technical representatives of the requiring activity. As a result of this evaluation, the low bid of McGraw-Edison Company (McGraw-Edison) was determined to be nonresponsive because in the agency evaluators' opinion, McGraw-Edison's descriptive literature, an unlabeled drawing entitled "Proposed Ballast and Capacitor MTG for HPSL (400) Watt Unidor, Washington, D.C. R.H.H. 8-20-74 Layout M74LM 6x1*** was impossible to technically evaluate to

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establish whether or not what they proposed to furnish conformed to the specification." On September 19, 1974, award was made to Capital Lighting and Supply, Inc. in the amount of \$264,046.79, as the lowest acceptable bidder. We understand that in accordance with the contract delivery schedule, performance was completed in December 1974.

McGraw-Edison contends that the drawing submitted with its bid was sufficient as to the details of the luminaire it proposed to furnish. To support this position, the protester points to statements of D.C. personnel after bid opening to the effect that they had no objection to the drawing. Furthermore, McGraw-Edison points out that an official of the D.C. Engineering Department requested a sample luminaire after bid opening and after examination approved its design. In addition, the protester contends that its drawing should have been considered sufficient because it "had been working with the Engineering Department prior to the bid opening regarding the specifications and this department was familiar with our proposed equipment."

The contracting officer does not dispute that a drawing and the sample luminaire furnished after bid opening may have been sufficient to establish that the McGraw-Edison's product would be acceptable. However, it is his position that evaluation of McGraw-Edison's bid for the subject procurement was required to be restricted to the bid as submitted. Therefore, the contracting officer recommended to the Contract Review Board that the McGraw-Edison bid be rejected on the basis of the technical evaluators' finding that the drawing submitted with the bid was insufficient to determine compliance with the specifications.

We believe the contracting officer's action in this respect was proper. It is a fundamental principle of the competitive bidding system that the responsiveness of a bid must be determined from the contents of the bid itself, without reference to extraneous aids or explanations submitted after bid opening, in fairness to those bidders whose bids were evaluated in accordance with and determined compliant with all the solicitation requirements. 50 Comp. Gen. 193, 201 (1970). We believe the same principle must be applied where, as here, an otherwise nonresponsive bid is claimed to be responsive on the basis of some knowledge of the bidder's product allegedly gained by Government personnel prior to

the bidding. Since we find no basis in the record presented to question the administrative position with respect to the insufficiency of the protester's drawing as submitted with the bid, we are unable to conclude that rejection of McGraw-Edison's bid as nonresponsive was improper as contended.

Although McGraw-Edison's protest concerned only the propriety of the agency's determination that its descriptive literature was not sufficient, we have noted a deficiency in the solicitation which requires discussion. The solicitation descriptive literature clause in general terms requested bidders to furnish sufficient data to establish that their products would meet the specification requirements. However, the solicitation did not advise bidders as to the specific elements of the product, such as design, materials, construction, for which the data was required. Under the "Requirement for Descriptive Literature" clause set forth in Federal Procurement Regulation (FPR) 1-2.202-5(d)(1), such information should be provided to bidders by the solicitation. Moreover, we note that the record furnished our Office by the District does not contain any justification for inclusion of the descriptive literature clause. See FPR 1-2.202-5(c). 46 Comp. Gen. 1 (1966).

With regard to the instant procurement, no remedial action is possible. The appropriate time to protest such a provision in an advertised solicitation is prior to the opening of bids. 4 C.F.R. 20.2(a). In this case no protest concerning this provision was filed with the District or our Office either before or after bid opening. Furthermore, the contract has been performed. However, we are pointing out to the District in a separate letter of today the need to take appropriate action to prevent a recurrence of the use of such a provision in the future.


Acting Comptroller General
of the United States