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David Kaufman
Proc. I

DECISION



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

FILE: B-187371

DATE: February 1, 1977

MATTER OF: Micronetics, Inc.

DIGEST:

Invitation specified brand name only item meeting all testing requirements and compatible for use as spare. Low bid is properly rejected where bidder in response to request for price verification indicates intention to furnish item he regards as equal to brand name.

Invitation for bids No. AC3A-6-0670 was issued on June 18, 1976, by the Federal Aviation Administration (FAA), Oklahoma City, with bid opening set for July 29. Micronetics, Inc., protests the failure of the FAA to award it, as low bidder, the contract on item No. 6 of the invitation. That item called for the supplying of 556 "Diode Microwave Associates Inc. P/N M8314 - 2L2TD1." The brand name requirement, according to the contracting activity, did not permit the bidding of an "or equal" item because the brand name item is the only one which currently meets all testing requirements and which is compatible for use as a field spare part with the system in which it will be used. Because of the disparity between the Micronetics' price and the next low bid, the contracting officer requested Micronetics to verify its price and to verify that it was offering the brand name specified. Micronetics confirmed its price, but stated that it intended to offer a part of its own manufacture and contended that the supplying of an "or equal" part was permissible since the procurement of the item was a competed one. Micronetics protested to our Office on September 9, 1976, the failure of the FAA to accept an "or equal" item on item No. 6.

The contracting activity advises that although a brand name was specified it was aware that more than one supplier could provide the item. Therefore, the procurement was competed in the hope that the anticipated competition would permit the activity to acquire

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the item at the lowest price available. From the record it appears that this expectation was justified in that three bids, besides that submitted by Micronetics, were submitted on item No. 6. The fact that the procurement, while competed, was not on an "or equal" basis should have been apparent from the language of the invitation since only one brand name was specified for item No. 6, whereas other items specified alternative brand names. Such a conclusion is also consonant with the fact that the invitation did not include the brand name or equal clause set forth in section 1-1.307-6 of the Federal Procurement Regulations (1964 ed. amend. 85), the inclusion of which is mandatory in any brand name or equal procurement.

Accordingly, we conclude that acceptance of an "or equal" bid was not contemplated or permitted for item No. 6 and that Micronetics' bid was properly rejected. Consequently, the protest is denied.


Deputy Comptroller General
of the United States