

Transp.

DECISION



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

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FILE: B-193178

DLG 01042

DATE: March 7, 1979

MATTER OF: Championship Sports Floors, Inc.

[Protest Concerning Bid Rejection as Nonresponsive]
DIGEST:

Where IFB contained brand name or equal clause and bidder proposed to furnish equal product, bid must contain sufficient descriptive data to evaluate it. Since review of descriptive data furnished reveals noncompliance with two of Government's stated requirements, bid was properly rejected as nonresponsive.

The Department of the Army, St. Louis Area Support Center, issued Invitation for Bid (IFB) No. DAAJ04-78-B-0029, for a 61' x 112' portable basketball floor, Horner Model Sports King or equal. Three bids were received and opened on September 20, 1978. The low bid from Championship Sports Floors, Inc. (CSFI) was declared nonresponsive, and award was made to the next lowest bidder, Horner Flooring Co. (Horner) on September 25, 1978. CSFI protested to our Office October 12, 1978.

The IFB contained the standard brand name or equal clause as specified in the Defense Acquisition Regulation § 7-2003.10, which provides in pertinent part that:

"(a) If items called for by this Invitation for Bids have been identified in the Schedule by a brand name or equal description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering equal products including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the Invitation for Bids.

(b) Unless the bidder clearly indicates in his bid that he is offering an equal product, his bid shall be considered as offering a brand name product referenced in the Invitation for Bids.

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(c)(1) If the bidder proposes to furnish an equal product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid, as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity."

In addition, the IFB contained in Section F these pertinent provisions:

"F.1 The playing surface shall be heavy duty first grade hard maple flooring.

F.4 Screw-tite powernails or cutnails shall not be permitted."

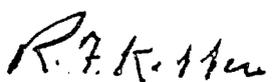
The contracting officer requested an evaluation by the Facilities Engineering Office of the specifications for the Model Sports King and for CSFI's model to determine if the specifications were equal. The evaluation by the Facilities Engineering Office pointed out various areas where CSFI's model failed to comply with the IFB specifications, and, in particular, specification F.1 and F.4. CSFI indicated in its solicitation that the flooring material used is select grade or better maple, and that screw type nails would be used for the flooring. Based on this evaluation the contracting officer determined that CSFI's bid was nonresponsive.

The responsiveness of an "equal" bid submitted in response to a brand name or equal procurement is dependent on the completeness and sufficiency of the descriptive information submitted with the bid, previously submitted information, or information otherwise reasonably available to the purchasing activity. Stacor Corporation; Isles Industries, Inc., B-189987, January 26, 1978, 78-1 CPD 68; Environmental Conditioners, Inc., B-188633, August 31, 1977, 77-2 CPD 166; Ocean Applied Research Corporation, B-186476, November 9, 1976, 76-2 CPD 393. Risi Industries, Inc.; Westmont Industries, B-191024, April 27, 1978, 78-1 CPD 329.

The record contains a copy of a letter from Davenport, Peters Company, distributors of lumber products. The letter confirms the fact that the term "select" is archaic as far as maple flooring is concerned, and that the current rules of the Maple Flooring Manufacturers Association enumerate four grades of maple flooring. This information, together with a review of the descriptive data submitted, shows that the bid did not comply with two of the Government's stated requirements: playing surface will be heavy duty first grade hard maple flooring and no screw-type pownails or cutnails will be permitted. Consequently, the bid was properly rejected as nonresponsive.

CSFI also states that ". . . the Contracting Officer is restrictive and discriminatory in this bid, particularly in view of the fact that he has quoted a statement written by one of the other bidders that if 'any other floors from any other manufacturer be submitted, it will not meet the standards as set forth in your specifications.'" The record does contain a letter from Horner to the contracting officer which contains such a statement but it does not appear that the contracting officer relied on this information in determining the CSFI bid nonresponsive; he relied on the technical evaluation referenced above.

Protest denied.


Deputy Comptroller General
of the United States