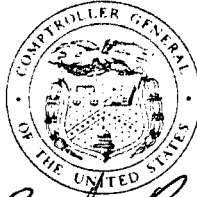


DECISION



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

15493
Fullman
PL2
[Protest of Bid Rejection as Nonresponsive]

FILE: B-199650

DATE: November 19, 1980

MATTER OF: J.M.T. Machine Company

DIGEST:

Where IFB identifies previously approved source-controlled components and requires bidders to list those that it will furnish so that procuring agency can insure that acceptance of bid will obligate bidder to meet agency's needs, bidder's failure to identify components requires rejection of bid as nonresponsive.

J.M.T. Machine Company (JMT) protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) DAAA09-80-B-2466, issued by the Department of the Army. We deny the protest.

The solicitation invited bids for 65 telescope mounts. The IFB as amended listed six drawings of the telescope mount's components which are "source-controlled." A source-controlled drawing is a manufacturer's drawing of an item which has been tested and approved, generally independent of any procurement action, as meeting the Government's needs (a source-controlled item). Clause B.35 of the IFB stated that awards for any end items which are source-controlled or which contain source-controlled components would be made only when the items or component parts had been tested and approved by bid opening. The clause required a bidder to list in the space provided the drawing numbers, manufacturers, and manufacturers' part numbers of the source-controlled components it would furnish, and notified bidders that "any bid which does not identify the approved product being offered * * * will be rejected."

~~1302~~ 113822

Although JMT was the previous manufacturer of the telescope mount, it did not include any information regarding the approved-source items it would furnish. The Army therefore rejected its bid as nonresponsive in accordance with B.35.

To be accepted, a bid as submitted must represent an unequivocal offer to provide the product called for in total conformance with the invitation's material terms and specifications. Edw. Kocharian & Company, Inc., 58 Comp. Gen. 214, 217 (1979), 79-1 CPD 20. Ordinarily, a signed bid containing a bid price will constitute such an offer. See Nordam Division of R.H. Siegfried, Inc., B-187031, January 4, 1977, 77-1 CPD 3. Where, however, a solicitation requires a bidder to do more than enter a bid price and sign the bid, a bidder generally must comply with the additional requirement. Storage Technology Corporation--Reconsideration, B-190035, March 31, 1978, 78-1 CPD 257. Generally, therefore, where information is needed to determine if the product offered will comply with the specifications, the need relates to responsiveness, and a bidder's failure to provide the information at bid opening requires rejection of the bid as nonresponsive. Werner-Herbison-Padgett, B-195956, January 23, 1980, 80-1 CPD 66; Abbott Power Corporation, B-192792, April 30, 1979, 79-1 CPD 295. Thus, we have held that where a solicitation provision requires a bidder to list in its bid the "qualified product" it will furnish, a bidder's total failure to identify the product it is offering is a material omission rendering the bid nonresponsive. (A qualified product is one that has been obtained, examined and tested, independent of any specific procurement, for compliance with specification requirements and then identified on a list of qualified products.) See Defense Acquisition Regulation §§ 1-1107.2(a) and 7-2003.6 (1976 ed.); D. Moody & Company, Inc.; Astronautics Corporation of America, 55 Comp. Gen. 1, 14 (1975), 75-2 CPD 1; 45 Comp. Gen. 397 (1966).

As in the case of a qualified product listing requirement, the procuring agency here required bidders to do more than sign the bid and enter a price; it required bidders to identify in their bids the source-controlled components to be furnished. We believe this was a material requirement as it appears the Government's needs can only be satisfied by an end-product that contains certain tested and approved components. Clause B.35 permitted bidders to offer (1) components already listed as approved; (2) components

allegedly approved but not yet listed, provided that evidence of such approval was included with the bids; or (3) components not yet tested and approved, although the clause warned bidders that it was up to them to arrange for testing and that the Government would not guarantee when the testing would take place, i.e., the Government would not guarantee that it would complete the testing and qualification procedures prior to bid opening. Since bidders could offer components other than what was already listed as approved, and since there was more than one approval source for some of the components, we think the listing by the bidder of the controlled-source items that would be furnished was needed to establish exactly what the bidder was offering.

Although JMT argues that a preaward survey would show that it would furnish the drawing's source-controlled components and that failure to identify these components in its bid "does not relieve the contractor from compliance," we think that by failing to identify in its bid what source-controlled components the firm would furnish, JMT did not obligate itself to furnish what the specifications required. See B-158197, April 5, 1966. This is so because nothing in the IFB itself obligated bidders to furnish the components of any particular manufacturer.

For example, the only possible limiting factor in the specification for the selection of component manufacturers was the source-controlled drawings themselves. While a legend on four of those drawings specified that only the item described in the drawing procured from the identified vendors listed thereon were approved by the agency for use in the specified application, the legend also stated that "a substitute item shall not be used without prior testing and approval" by the agency. The other two drawings listed the approved vendor but stated that "all sources must comply with the physical and functional requirements of the manufacturer's item indicated" and that item approval was required.

We believe that the substance of the legal obligation created by the specifications served only to limit acceptance of the end product and its component parts until such time as the components were approved by the agency, e.g., anytime before delivery. We do not believe the specifications served to obligate a bidder at the time of bid opening to furnish

only the product of a source which had already been approved by the time bids were opened. Thus, without naming the source, JMT essentially frustrated the purpose of the source-controlled item clause.

We note here that JMT did indicate in its bid that JMT's plant in Philadelphia would be the place of performance. In this connection, we have held that the failure of a bidder to list the test number or item name of a qualified product does not render its bid nonresponsive if the bidder has included other information in the bid which allows the contracting officer to determine that a qualified product is being offered. See 53 Comp. Gen. 249 (1973); 45 Comp. Gen. 397, supra.

However, the fact that the firm previously had manufactured the telescope mount and identified the plant where manufacture would take place is of no avail to the protester here since the end item is not source-controlled and JMT is not an approved source for any of the source-controlled components. Therefore, we cannot say that JMT's bid was based on furnishing previously tested and approved -- source-controlled -- components. Compare 45 Comp. Gen. 397, supra, where the bidder which indicated in its bid that it would manufacture the end product also was listed on the qualified products list as a qualified manufacturer of the end product and the procuring agency, therefore, could determine that the bidder would furnish a qualified product.

The protest is denied.

Henry R. Van Cleave

For the Comptroller General
of the United States