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DECISION



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

FILE: B-202212

DATE: June 15, 1981

MATTER OF: Lektro Incorporated

DIGEST:

1. Bid was properly found nonresponsive where descriptive literature submitted with bid did not clearly show product met salient characteristics of brand name model.
2. Statement on bidder's descriptive literature that, in event of discrepancy between literature and solicitation specifications, specifications would prevail does not make otherwise non-responsive bid responsive.

Lektro Incorporated protests the rejection of its bid under invitation for bids (IFB) No. DABT10-80-B-0315 issued by the Department of the Army for electric forklift trucks, Eaton-Yale Model ERC-205A or equal.

We have decided that the protest has no merit.

The IFB listed salient characteristics of the brand name model that an equal product was to meet and required descriptive literature to show product equality. Among the salient characteristics, the IFB specified that the trucks be equipped with power steering and included the following requirement:

"q. Truck furnished must be manufacturer's standard model presently available on the commercial market. Trucks which require modification to meet the salient characteristics will be accepted only if

[Protest of Bid Rejection as Nonresponsive]

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the truck as modified has been on the commercial market and in successful operation for a period of one year from date of submission of bids. Evidence to this effect must be furnished with bid."

Lektro offered its model 25/24 truck and marked-up commercial literature for its model 30/24, the only model for which literature is printed, to reflect the standard design of the model 25/24. The protester states that it took no exceptions to the IFB specifications, indicated by a clause in the literature which provided that if there were any discrepancy between the data contained in the literature and the IFB specification, the specification would prevail. In one of the several extensions of the acceptance period of its bid, Lektro stated that the truck offered met the specifications, including paragraph "q" quoted above, without exception. Lektro asserts that, as a small business and the apparent low bidder, it was treated unfairly.

The Army states that in marking its commercial literature Lektro indicated power steering, but did not alter the steering and axle descriptions which pertain to mechanical operation and state that the firm's unique design eliminates the need for power steering. The contracting officer concluded that the literature made the bid unclear whether the truck proposed was equipped with power steering. Contrary to the protester's assertion, the Army contends that the literature provision stating that the IFB specifications would prevail in the event of a discrepancy did not satisfy Lektro's obligation, pursuant to Defense Acquisition Regulation (DAR) § 7-2003.10, Defense Procurement Circular No. 76-6, January 31, 1977, to submit descriptive literature from which the agency could determine that the product offered met the salient characteristics. Because it was not possible to determine from the bid whether Lektro's truck complied with all the salient characteristics, the Army asserts that the bid was properly rejected as nonresponsive in accordance with the IFB Brand Name or Equal clause and DAR § 2-404.2(a), Defense Acquisition Circular (DAC) No. 76-17, September 1, 1978. In addition, the Army states that the bid and

descriptive literature also failed to establish that the model 25/24 was Lektro's standard, presently commercially available model or that it had been on the commercial market and in successful operation for the requisite period of time. The contracting agency takes the position that Lektro's failure in this regard is also a sufficient basis upon which the bid may be rejected as nonresponsive under DAR § 2-404.2(b), DAC No. 76-17, September 1, 1978.

Because an agency's determination whether the product offered meets the specifications must be based on the data submitted with the bid, the Army asserts that it could not properly consider the protester's statement concerning compliance of the model 25/24 with the IFB which was included in one of Lektro's post-bid-opening telegram extending its bid acceptance period.

We agree with the Army. On the basis of the record, we must conclude that Lektro's bid was, at best, ambiguous as to whether Lektro's truck was equipped with power steering. Where, as here, a bid is subject to two reasonable interpretations under one of which it is nonresponsive, the bid is considered nonresponsive and must be rejected. Data-Chron, Inc., B-196801, July 29, 1980, 80-2 CPD 78.

We have held that a protester's blanket statement of compliance with the specifications does not suffice to remove an ambiguity in a bid or to make the bid responsive. Data-Chron, Inc., *supra*; Spectrolab, Inc., B-189947, December 7, 1977, 77-2 CPD 438. Therefore, neither the legend on Lektro's descriptive literature nor the firm's assurance after bid opening affects the propriety of the Army's decision that the protester's bid was not responsive to the IFB.

Because Lektro's bid was properly rejected as nonresponsive to the power steering requirement, whether the protester's product is a standard commercially available item is academic.

The protest is denied.

Milton J. Forshaw

Acting Comptroller General
of the United States