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DECISION



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

FILE: B-205119

DATE: February 9, 1982

MATTER OF: Illinois Chemical Corporation

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. Protester's statement at preaward conference assuring that product offered would conform to specifications did not make otherwise nonresponsive bid responsive.

Illinois Chemical Corporation (Illinois Chemical) protests the rejection of its bid under invitation for bids (IFB) No. DTCG30-81-B-05151 issued by the Department of Transportation, United States Coast Guard (Coast Guard), for 3,034 feet of oil containment boom, Expandi-Oil Boom Model 3000 or equal. For the reasons stated below, we deny the protest.

The IFB listed salient characteristics of the brand name model that an equal product was required to meet and incorporated by reference a brand name or equal clause requiring that bidders furnish descriptive literature to show product equality. Among the salient characteristics, the IFB specified that the boom must be capable of being stowed on pallets and required that the boom be able to sustain damage resulting in the flooding of one flotation chamber and still maintain sufficient freeboard to contain or deflect oil.

Illinois Chemical offered its Model 12/18 Zoom-boom and enclosed with its bid a technical proposal prepared by Versatech, the Zoom-boom's manufacturer, and Versatech's technical manual. The bid was rejected as nonresponsive because the Coast Guard could not determine from the materials submitted that all the solicitation's requirements would be

met. Specifically, the contracting officer found that the descriptive literature was unclear as to whether the proposed boom was capable of palletized storage, and that the materials failed to establish that the boom possessed flotation properties described in the list of salient characteristics.

Illinois Chemical argues, in substance, that the descriptive literature furnished with the bid was not intended to qualify the bid; instead, the materials were submitted to indicate the availability of optional accessories and to provide the agency with "technical suggestions" pertaining to the use and storage of the Zoom-boom. In this regard, the protester contends that its bid took no exception to the specifications and that statements made by its representatives at a preaward bidders' conference dispelled any uncertainty as to the Zoom-boom's palletization capability.

Additionally, the protester alleges that the contracting officer improperly failed to apply Buy American Act principles in his evaluation of the bids and that the Coast Guard contravened our Bid Protest Procedures by awarding the contract before Illinois Chemical filed its protest.

When a brand name or equal purchase description is used, it is the responsibility of a bidder who offers an "equal" product to establish, by means of information or samples furnished with the bid, that the offered product will meet the salient characteristics of the brand name product. Sequoia Pacific Corporation, B-199583, January 7, 1981, 81-1 CPD 13; Cathey Enterprises, Inc., B-194334, June 13, 1979, 79-1 CPD 418. In this case, the bid submitted by Illinois Chemical did not speak to the IFB's palletization requirement but instead proposed alternative methods of boom storage under the heading "Optional Accessories." The technical proposal discussed these storage methods, stating that "[i]n lieu of the 'pallet storage' referenced in our specification, we propose our standard laced and zippered boom storage bag, as illustrated in the Manual." Drawings in the manual depicted two types of boom storage, neither of which indicated palletization capability.

Under these circumstances, we must conclude that Illinois Chemical's bid was, at best, ambiguous as to whether the proposed boom was capable of palletized storage. 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. Lektro Incorporated, B-202212, June 15, 1981, 81-1 CPD 484; Data Chron, Inc., B-196801, July 29, 1980, 80-2 CPD 8.

Furthermore, it is well settled that even a protester's blanket statement of compliance with the specifications in a bid does not suffice to remove an ambiguity in a bid or to make the bid responsive. Lektro Incorporated, supra. Therefore, the firm's assurances at the preaward conference would not affect the agency's decision that the protester's bid was not responsive to the IFB.

Having found the determination of nonresponsiveness to be proper, we need not address the question of whether Illinois Chemical's product possessed the flotation properties described in the list of salient characteristics. For the same reason, the question raised by the protester concerning the agency's alleged failure to comply with Buy American Act requirements in evaluating the awardee's bid is academic since Illinois Chemical was not in line for award in any event.

Illinois Chemical alleges that award of the subject contract was made in violation of our Bid Protest Procedures, 4 C.F.R. § 21.4 (1981), which provide that when a protest is filed with our Office, award should not be made prior to our ruling on the case unless we have been furnished with a written finding by the agency head specifying the factors which will not permit a delay in the award. By letter of September 28, 1981, the Coast Guard notified Illinois Chemical of the rejection of its bid as nonresponsive and also stated that "the award was made in the amount of \$78,692.85 to Response Systems, Inc." Since Illinois Chemical's October 5, 1981, protest was filed subsequent to the date of award, the contract was not awarded in violation of section 21.4 of our Procedures. See AFB Contractors, Inc., B-181801, December 12, 1974, 74-2 CPD 329.

The protest is denied.

for *Whitton J. Aowlan*
Comptroller General
of the United States