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DECISION



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

FILE: B-204791

DATE: March 9, 1982

MATTER OF: Bell & Howell Company, Datatape Division

DIGEST:

1. Where the solicitation does not require National Security Agency (NSA) approval of offered products or compliance with an NSA specification for use of the product on classified materials, the contracting agency could not properly consider these matters in determining bid responsiveness. To the extent the protester implies that the solicitation should have included these requirements, the protest is untimely because it was not filed before bid opening.
2. Protest alleging that the awardee's bid of an "equal" product on a brand name or equal procurement is nonresponsive because the bidder's descriptive material, consisting of nondetailed drawing of a new product which parrots required salient characteristics, is inadequate to justify the contracting agency's determination that the product meets the salient characteristics is denied.

Bell & Howell Company, Datatape Division (B&H), protests the award of a contract to General Kinetics, Inc. (GKI), for magnetic tape bulk degaussing (erasing) devices and data, under brand name or equal invitation for bids (IFB) No. DAAB07-81-B-1635, by the Army Communications-Electronics Command (Army), Fort Monmouth, New Jersey.

We find the protest untimely in part and without merit in part.

The protester contends that GKI's bid is nonresponsive to the IFB because its offered model K-90 is neither a listed brand name nor an "equal"

product which meets the specified salient characteristics. B&H asserts that GKI did not furnish adequate descriptive material from which the Army could determine that the model K-90 met the salient characteristics, as required by Defense Acquisition Regulation (DAR) §§ 1-1206.3 and 7-2003.10 (1976 ed.), citing, for example, Ocean Applied Research Corporation, B-186476, November 11, 1976, 76-2 CPD 393. The protester argues that the drawing GKI submitted shows only a box with a drawer, provides no information about how the model K-90 will perform the work, and includes a list of features which merely parrots the IFB salient characteristics. In addition, B&H claims that GKI's product has not been previously manufactured or offered for sale, that it is a modified model K-80 for which GKI failed to explain the modifications necessary to meet the IFB specifications, and that it is not listed as an approved degausser which complies with the National Security Agency (NSA) specification for use in degaussing classified materials. The protester concludes that GKI's bid was not eligible for award and that a contract should be awarded to B&H.

The Army states that although the NSA specification was used as a guide in preparing the IFB, nothing in the IFB or the salient characteristics requires that the degausser be approved by NSA or meet the NSA specification. The Army contends that this aspect of B&H's protest is untimely because failure to require NSA approval or compliance with the NSA specification constitute alleged solicitation improprieties which should have been protested before bid opening. 4 C.F.R. § 21.2(b)(1) (1981).

Because our review of the record shows that the IFB does not require NSA approval or compliance with the NSA specification, the Army could not properly consider these matters in determining the responsiveness of GKI's bid. Environmental Conditioners, Inc., B-188633, August 31, 1977, 77-2 CPD CPD 166; AMF Inc., B-179914, March 26, 1974, 74-1 CPD 144. This aspect of B&H's protest is denied. To the extent B&H implies that the IFB should have included these requirements, we agree with the Army that the protest concerns alleged solicitation deficiencies which were apparent from the IFB. Therefore, B&H's post-bid-opening protest on this ground is untimely and will not be considered on the merits. See Sprayfoam Southwest, Inc., B-201071, July 16, 1981, 81-2 CPD 41.

Contrary to B&H's assertions, the Army insists that the IFB did not require products previously manufactured or offered for sale and that GKI's model K-90 is a new product rather than a modification of the model K-80. The Army determined that GKI's device does meet all the salient characteristics listed in the IFB on the basis of GKI's drawing which addressed each of the enumerated characteristics. Following B&H's protest, the drawing was resubmitted for technical review, which reaffirmed the agency's determination that the model K-90 qualifies as an equivalent to the listed brand name products. The contracting agency argues that B&H has not shown that its decision that GKI's bid is responsive was unreasonable, arbitrary, or violative of procurement statutes or regulations. The Army therefore concludes that the protest provides no basis for our Office to question the agency's determination and award, citing E.C. Campbell, Inc., B-201025.2, July 8, 1981, 81-2 CPD 19.

The responsiveness of an "equal" bid to a brand name or equal procurement depends upon the completeness and sufficiency of the descriptive material submitted with the bid, previously submitted information, or information otherwise reasonably available to the contracting agency. Environmental Conditioners, Inc., supra. Because the adequacy of the descriptive material and the equality of the product it describes are technical evaluations for the judgment of the contracting agency, we have deferred to the agency's determination unless it is clear from the record that the descriptive material is ambiguous or evidences nonconformity with the salient characteristics. E.C. Campbell, Inc., supra; National Micrographics Systems, Inc., B-196167.2, February 20, 1980, 80-1 CPD 147; SEG Electronics Corporation, et al., B-179767, May 16, 1974, 74-1 CPD 258.

While B&H disagrees with the Army's determination concerning the adequacy of GKI's drawing and the equality of its model K-90, it does not allege that the product described deviates from any of the IFB salient characteristics. Instead, B&H argues that because the model K-90 has not been manufactured before, GKI's drawing does not constitute sufficient descriptive material to show that it complies with the required salient characteristics in order to establish product equality. We have held that such arguments misconstrue

the purpose of the "Brand Name or Equal" clause and that conformity with IFB salient characteristics ordinarily suffices to support selection of an "equal" product. John Fluke Manufacturing Co., Inc., B-187588, June 6, 1977, 77-1 CPD 394.

Since GKI took no exception to the IFB requirements in its bid, the bid constitutes an unequivocal offer to provide a degaussing device which meets the IFB specifications. GKI's drawing gives no indication to the contrary. We are not prepared to find that the submitted drawing was insufficient to permit the contracting agency to assess the bidder's compliance with the salient characteristics. Because we find no basis in the record to question the Army's determination and award, we deny this part of B&H's protest.

Wilton J. Fowler
for Comptroller General
of the United States