

DECISION

71-118398
118398
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-205016 DATE: May 17, 1982
MATTER OF: LogE/Spatial Data Systems, Inc.
DIGEST:

Where unsolicited descriptive literature describes same model offered in bid, relationship between such literature and bid is sufficient so that literature, which describes nonconforming equipment, may not be disregarded by agency. Cover letter stating that equipment meets all requirements is not sufficient to disassociate such descriptive literature from the bid and prevent bid from being rejected as nonresponsive.

LogE/Spatial Data Systems, Inc. protests the award of a contract to DeAnza Systems, Inc. under invitation for bids (IFB) No. 1-53-1170.0656 issued by Langley Research Center, National Aeronautics and Space Administration (NASA) for bids for a digital image processing system. LogE contends that its low bid was improperly rejected as nonresponsive because of unsolicited descriptive literature submitted with the bid. We deny the protest.

Although the IFB did not call for descriptive literature, LogE included a cover letter with its bid stating that its bid was based on its Eye Com III model, "which meets all the requirements and specifications of your solicitation" and submitted literature describing this model. NASA rejected the bid as nonresponsive because the literature indicated LogE's Eye Com III did not meet the specifications in several areas and there was no indication in LogE's bid that it intended to make any modifications to its system in order to comply with the specifications.

LogE contends the rejection was improper because its cover letter unequivocally stated the equipment to be delivered would be in compliance with the specifications and its unsolicited descriptive literature in no way qualified its bid and should not have been considered. LogE further contends that even if it were proper for the agency to evaluate the literature, NASA erred in concluding that the Eye Com III does not meet the solicitation's technical requirements.

It is true, as LogE asserts, that NASA Procurement Regulation § 2.202-5(f) states that unsolicited descriptive literature accompanying a bid should not be considered as qualifying the bid unless it is clear from the bid or accompanying papers that the bidder intended the descriptive literature to qualify the bid. Where, however, the unsolicited literature contains the same model number or name as the equipment offered in the bid, there is a sufficient relationship between the bid and the descriptive literature so that the literature may not be disregarded. Devault Manufacturing Company, B-195959, January 7, 1980, 80-1 CPD 18. Since the cover letter submitted with LogE's bid stated that the system model offered in its bid was the model described by the included literature, we believe the contracting officer was required to consider the literature as qualifying LogE's bid.

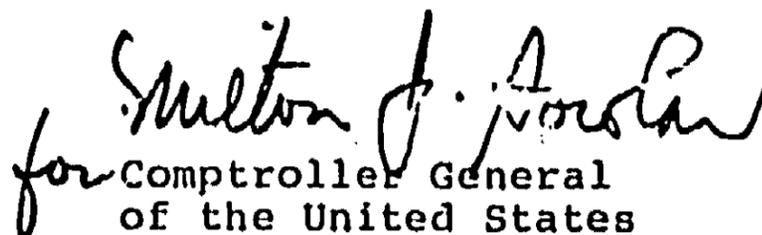
The fact that this same cover letter also stated that the model offered would meet the specifications does not alter our conclusion. Although the protester seems to contend that the statement in the covering letter meant that the equipment bid would meet the solicitation requirements without reference to the unsolicited literature, the bid also could reasonably be interpreted as reflecting the bidder's view that the equipment as described in the enclosed literature would meet the specification requirements. Under these circumstances, where the model offered in the bid was clearly that described in the unsolicited literature, we do not believe the blanket statement in the cover letter that the item meets the solicitation requirements is sufficient to disassociate the literature from the bid. See Spectrolab, Inc., B-189947, December 7, 1977, 77-2 CPD 438.

With regard to what the literature showed, the agency points out several instances where the system described in the literature does not meet the specification requirements. For example, the agency notes that LogE's literature

states that its system operates with a displayed data format of 640 X 480 pixels while the specifications require 512 X 512 pixels. Although the protester maintains that its equipment is capable of operating with a 512 X 512 format, we are unable to find such a statement in the enclosed literature. The specifications require a normal operating line rate sufficient to display 512 lines. In addition, the specifications require a capability of operating at a line rate capable of displaying 480 lines. LogE's literature indicates its equipment can display the 480 lines but does not indicate it can display 512 lines. Again, although LogE claims its equipment can meet the requirement, it is unable to show where in the enclosed literature the larger display is described. Further, although the specifications state that the equipment must have an expansion capability to at least 12 memory modules, the agency notes that LogE's literature specifies only that four memory modules may be combined into a contiguous image space. The protester argues that its equipment can be expanded as required but does not show where such capability is specified in its literature. Thus, as the agency indicates, the equipment described in the literature does not in several instances meet the specification requirements.

Material deviations contained in descriptive literature submitted with a bid will render that bid nonresponsive despite a blanket statement also submitted with the bid that the item offered will comply with the specifications. IFR, Inc., B-203391.4(1), April 1, 1982, 82-1 CPD; Hughes-Henry Equipment Co., B-200049, November 5, 1980, 80-2 CPD 338. Under these circumstances, although LogE maintains that its system will meet all the specifications and its cover letter so states, the system as described in the literature does not. The ambiguity in the bid created by the literature LogE submitted with its bid properly resulted in the agency rejecting the bid as nonresponsive. Lektro Incorporated, B-202212, June 15, 1981, 81-1 CPD 484.

The protest is denied.


for Comptroller General
of the United States