

DECISION

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

FILE: B-208703

DATE: September 30, 1982

MATTER OF: CNC Company

DIGEST:

1. 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, and a mere blanket offer to custom manufacture to specifications does not satisfy this obligation.
2. Correction of a nonresponsive bid may not be permitted after bid opening since it would permit the bidder an election to accept or reject the bid which would adversely affect the integrity of the competitive bidding system.

CNC Company (CNC) protests rejection of its bid as nonresponsive to invitation for bids (IFB) M00681-82-B-0021 issued by the United States Marine Corps (USMC) for 12 line items consisting of dish, cup or glass dispensers and serving counters. Award was limited to all the items as a lot and the items were to be the Shelby Manufacturing Company brand name or equal. Bidders offering an "equal" product other than the brand name product were required to furnish descriptive material sufficient to permit the USMC to determine that the product offered met the salient characteristics requirements of the IFB. CNC was the lowest bidder, but did not supply descriptive material for all of the line items. The contracting officer therefore held the bid of CNC to be nonresponsive.

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We deny the protest.

On each line item, CNC specified that the item would be "Custom Fabricated to the Specifications." With its bid CNC furnished information apparently relating to line items 1, 5, 6, 7, 8, 9 and 10. However, there was apparently no descriptive literature for line items 2, 3, 4, 11 and 12.

CNC alleges that literature submitted covered information on all items of the IFB, and that there is no lack of information essential to a determination that the requirements would be met. CNC also concedes that no brochures for components were submitted and alleges discrimination since the name brand manufacturer was not required to submit descriptive literature. CNC also alleges that CNC should have been contacted by the contracting officer for clarification before being found nonresponsive.

The salient features provision of the IFB states, in pertinent part, that:

"* * * the following features are essential to the Government and will be factors in the evaluations of bids: DESIGN, MATERIALS, CONSTRUCTION OF RACK ELEVATING MECHANISM AND CAPACITY, as specified in Sections B & C of the Schedule."

Section "B," Supplies/Services, lists the salient characteristics for each line item. Section "C," Specifications/Description, lists additional characteristics, including the elevating mechanisms, dispensing height adjustment mechanisms and dispenser tubes.

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 and the bidder's failure to do so will render the bid nonresponsive. Sequoia Pacific Corporation, B-199583, January 7, 1981, 81-1 CPD 13. A blanket offer merely to meet the specifications does not satisfy this requirement. There must be some

showing that the equal product in fact meets the salient characteristics. Omni-Spectra, Inc., B-184341, April 14, 1976, 76-1 CPD 251; 50 Comp. Gen. 193 (1970); 41 id. 366 (1961). In the latter decision, we held that a bid which stated that the bidder was bidding "According to bid specs" without including the information required by the solicitation was nonresponsive.

Although CNC offered to custom manufacture in accordance with the specifications, no information was furnished from which USMC could evaluate compliance with the salient construction features of the brand name product in connection, for example, with the elevating mechanism and lock. Therefore, the bid of CNC was properly found to be nonresponsive.

A bid which is nonresponsive may not be corrected by the bidder after bid opening. To allow the bidder to correct a material deviation from the solicitation after bid opening would permit a bidder to accept or reject a contract after bids are exposed by correcting or refusing to correct its bid, which would adversely affect the integrity of the competitive bidding system. Vin Construction Company, Inc., B-206526, June 30, 1982, 82-1 CPD 637.

CNC's complaint of alleged discrimination because the brand name manufacturer is not required to submit descriptive literature is denied since under the brand name or equal clause only bidders offering an "equal" product other than the brand name product are required to furnish such information.

Harry R. Can. Cleve
for Comptroller General
of the United States