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DECISION



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

FILE: B-207836.2

DATE: December 21, 1982

MATTER OF: Audio Technologies, Inc.--Reconsideration

DIGEST:

Where specifications described components by brand name followed by the words "or equal" or "approved equivalent," bidder who offered to comply with specifications was responsive. Bidder was not required to obtain the agency's approval to furnish any equal or equivalent components.

Audio Technologies, Inc. (ATI), requests reconsideration of our decision in the matter of Audio Technologies, Inc., B-207836, July 30, 1982, 82-2 CPD 97. That decision dismissed, as untimely, ATI's protest against the award of a contract to Logitek Electronic Systems, Inc. (Logitek), under invitation for bids (IFB) No. 23-23-2-EA issued by the International Communication Agency (ICA) for certain radio broadcast equipment racks.

ATI has provided additional information to persuade us that its protest is timely. However, after considering the merits of ATI's contention--that the ICA's interpretation of the specifications is incorrect, making Logitek's bid nonresponsive--we deny the protest.

The IFB called for radio broadcast equipment racks as described in the IFB's specifications and drawings. Some of the components of the end items were described in the specifications by brand name followed by the words "or equal" or "approved equivalent."

After bid opening, by letter dated April 2, 1982, ATI wrote to the ICA contracting officer to express its views that any bid based on unapproved equivalent components would be nonresponsive. By letter dated April 14, 1982, ICA responded, advising ATI that, where the IFB specified either an equal or an approved equivalent, advance approval of any component was not required for substitution and no amendment

to the IFB was required. On May 7, 1982, ATI received notice that ICA made award to Logitek and on that day ATI protested to ICA, contending that Logitek's bid was nonresponsive because it was based on substitute components without prior agency approval. On June 10, 1982, ATI protested here.

Our decision noted that in order to be considered timely, a protest must be received by either the contracting agency or our Office within 10 working days after the basis of protest was known or should have been known, whichever is earlier. We concluded that ATI knew or should have known its basis of protest--that ATI and ICA did not interpret the specifications the same way--no later than receipt of the ICA's letter dated April 14, 1982. We stated that absent any indication in the record concerning the date that ATI actually received the April 14, 1982, letter, we found that it is reasonable to assume that ATI received the letter within a week of its issuance. On that basis, we dismissed the protest as untimely since ATI's protest was not filed here or with the agency within 10 working days of April 21, 1982, when we assumed that ATI received the April 14, 1982, letter.

On reconsideration, ATI points out that it did not receive the ICA's April 14, 1982, letter until April 26, 1982. Therefore, the protest is timely. See Lundy Electronics and Systems, Inc., B-202181, March 4, 1982, 82-1 CPD 192.

Regarding the merits, as noted, the record contains the ICA letter to ATI dated April 14, 1982, and ICA's letter to ATI dated June 23, 1982, denying the protest. ICA advised that where the IFB specified an equal or an approved equivalent, ICA advance approval was not required for substitution and no amendment to the IFB was required.

We note that there is no requirement in the solicitation for a bidder to submit descriptive literature or data prior to bid opening concerning any "equal" product it intends to use during contract performance. On the contrary, the solicitation requires approval, inspection and tests of the equipment, but these steps are required during contract performance, not prior to bid opening. This procurement simply was not a "brand name or equal" procurement in which

the acceptability of the "equal" item offered is generally determined on the basis of literature and data submitted with the bid. In fact, ICA reports that it specifically determined that the "brand name or equal" provisions of 41 C.F.R. § 1-1.307-6 (1982) would not be applicable to the component parts solicited here. See Sprayfoam Southwest, Inc., B-201071, July 16, 1981, 81-2 CPD 41, where we considered and rejected a similar allegation concerning this type of specification requirement. There, as here, there was no provision in the IFB stating that the components listed in any bid were required to be certified as "approved equivalents" prior to bid opening. In our view, in the absence of such language in the IFB, Logitek's bid which took no exceptions to the performance requirements specified in the IFB was responsive and Logitek is obligated to provide equipment and materials in accordance with the ICA's stated needs. Sprayfoam Southwest, Inc., supra.

Moreover, whether the equipment and material eventually supplied by Logitek complies with the ICA specifications is a matter of contract administration for the contracting agency and does not affect the validity of the award. Impact Instrumentation, Inc., B-198704, July 28, 1980, 30-2 CPD 15.

Since in its bid Logitek took no exception to the specifications and since the IFB did not require any approval of sources prior to bid opening, we find Logitek's bid was properly determined to be responsive. Accordingly, award to Logitek was correct.

We deny the protest.

for 
Comptroller General
of the United States