

24710

DECISION



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

FILE: B-210416

DATE: April 5, 1983

MATTER OF: Vista Scientific Corporation

DIGEST:

1. Where bid failed to include descriptive data on offered "or equal" item (and data had not previously been submitted and was not reasonably available to contracting activity), bid was properly determined to be nonresponsive. Failure may not be waived as minor informality/irregularity and data may not be submitted after bid opening in order to make nonresponsive bid responsive where data was not commercially available prior to bid opening.
2. Importance of maintaining integrity of competitive bidding system outweighs possibility that Government might realize monetary savings if material deficiency in bid is corrected or waived.

Vista Scientific Corporation (Vista) protests the rejection of its low bid under Newark Air Force Base invitation for bids No. F33659-83-BA002. The bid was rejected as nonresponsive because Vista failed to submit prior to bid opening descriptive data on the "or equal" item (an item manufactured by Vista) it was offering to supply.

We deny the protest.

Bids were requested to be submitted on a "Thunder Model 7000 or equal" relative humidity generation and temperature calibration system. The salient characteristics with which an "or equal" system was to comply were set forth in the invitation. The solicitation included the following provision regarding the submission of an "or equal" bid.

025078

"L33 BRAND NAME OR EQUAL (1973 APR) DAR
7-2003.10

* * * * *

"(c)(1) If the bidder proposes to furnish an 'equal' product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such products shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid, as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity."

Vista submitted no descriptive data with its bid. After bid opening, Vista submitted the data.

It is Vista's position that the provisions of paragraph L33 are cautionary only and do not require automatic disqualification of a bidder who does not provide the data at bid opening. Vista believes that the provisions merely make it clear that the descriptive data must be made reasonably available to the contracting activity. Vista made the data reasonably available to the activity by providing it prior to award and, therefore, the activity was

in the same position to evaluate the Vista system as if Vista had submitted the data with its bid. Further, Vista views the obligation of the activity as being to act in the best interest of the Government. Since the Vista bid price is substantially lower than the price of the only other bidder (the manufacturer of the brand name system), Vista believes that--even interpreting paragraph L33 as the activity does--Vista's failure to provide the data at bid opening was merely a minor informality/irregularity which may be waived under invitation paragraph L10 (AWARD OF CONTRACT). Finally, Vista states that its system does meet the salient characteristics set forth in the invitation and that it is technically qualified to supply the system being purchased.

We have consistently held that where descriptive data is used for bid evaluation and for the determination of whether an "or equal" item conforms with the specifications, submission of that data is a matter of responsiveness. In such circumstances, a bidder's failure to provide prior to bid opening such data as is necessary to demonstrate compliance with the specifications requires rejection of the bid, for a bidder may not explain the meaning of the bid or his intention to comply with specifications after bids have been opened. To allow a bidder to submit additional data after bid opening to make responsive a bid which was nonresponsive for inadequate or nonconforming descriptive data would be tantamount to permitting the improper submission of a new bid. International Medical Industries, Inc., B-196432.5, January 19, 1981, 81-1 CPD 28. Thus, the failure to provide proper descriptive data could not be waived as a minor informality/irregularity.

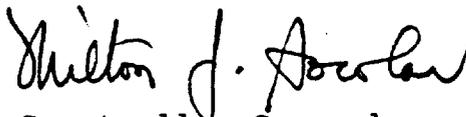
Further, the determination of whether an "or equal" item is responsive to the salient characteristics requirements is dependent on the completeness and sufficiency of the descriptive data submitted with the bid, previously submitted data, or data otherwise reasonably available to the contracting activity. It is not enough that the bidder believes its product to be equal; the Government must be able to determine its equality. E. C. Campbell, Inc., B-201025.2, July 8, 1981, 81-2 CPD 19.

Vista contends that while it did not submit the data prior to bid opening and had not submitted it previously, the data was reasonably available to the contracting activity since it was submitted to the activity by Vista prior to contract award. We have held that for descriptive data submitted after bid opening to be properly considered, it must be commercially available prior to the date of the

bid opening. Data-Chron, Inc., B-196801, July 29, 1980, 80-2 CPD 78. But the activity states that the Vista data was not reasonably available to it, and Vista does not contend that this data was commercially available. Thus, we agree with the determination of the activity that the Vista bid was nonresponsive for its failure to provide the data at bid opening.

Finally, as regards the contention that an award to Vista would have been in the best interest of the Government because its price was substantially lower than the price of the other bidder, the importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the Government might realize a monetary savings in a particular procurement if a material deficiency is corrected or waived. Marino Construction Company, Inc., B-204970, February 25, 1982, 82-1 CPD 167.

Accordingly, the protest is denied.

for 
Comptroller General
of the United States