

DECISION



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

FILE: B-212518

DATE: December 27, 1983

MATTER OF: Le Prix Electrical Distributors, Ltd.

DIGEST:

Where "equal" item does not conform to salient characteristics of brand name product, bid must be rejected as non-responsive. Although protester believes agency should have sought verification, bidder cannot cure defect because the bidder's intent to comply with the specifications must be determined at bid opening from face of bid.

Le Prix Electrical Distributors, Ltd. (Le Prix), protests the rejection of its bid as nonresponsive for failing to meet the brand name or equal requirements under invitation for bids (IFB) No. DTFA12-83-B-00030, issued by the Department of Transportation, Federal Aviation Administration (FAA). We deny the protest.

The IFB required supplying Verd-A-Ray Corp. or equal lighting equipment for the parking lot and the road area at the Air Route Traffic Control Center in Nashua, New Hampshire. The IFB contained the standard brand name or equal clause required by Federal Procurement Regulations (FPR) § 1-1.307-6 (1964 ed. amend. 139). Bidders were advised that equal products would be considered for award if such products were clearly identified in the bids and were determined by the government to meet fully the salient characteristics listed in the invitation. Bidders were to furnish as part of their bids all descriptive material necessary for the purchasing activity to determine whether the product offered met the salient characteristics.

FAA states the Le Prix bid deviated from the IFB in the following respects:

- "(1) Le Prix bid fabricated sheet aluminum with welded seams rather than the die cast aluminum specified . . .
- (2) The Halo Architectural Lighting Systems bid were larger than the Verd-A-Ray or equal specified . . .
- (3) The reflector specified . . . was to be

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texturized, anodized aluminum; specular aluminum was bid. . . . (4) The refractor . . . was to be 'molded prismatic polycarbonate.' The protestor offered this feature as an option . . . (5) The protestor did not specify whether the system bid included . . . (A) a ballast suitable for high ambient temperature . . . (B) Stainless steel or cadmium plated hardware . . . (C) lamp socket with spring loaded nickel plated contacts . . . and (D) faceted reflectors. . . ."

Le Prix disputes FAA's position and maintains that the bid met the IFB requirements and that if FAA had any questions, Le Prix would have provided additional verification. Moreover, Le Prix alleges that its lighting fixtures were equal to or exceeded the salient characteristics of the name brand.

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., B-188633, August 31, 1977, 77-2 CPD 166. 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. Bell & Howell Company, Datatape Division, B-204791, March 9, 1982, 82-1 CPD 219.

Despite its argument to the contrary, Le Prix's descriptive literature did take exception to the salient characteristics. Therefore, rejection of Le Prix's bid as nonresponsive was proper since we have held that where the equal item bid does not show conformance to the salient characteristics of the brand name product, the bid must be rejected as nonresponsive. Interad, Ltd., B-210013, May 10, 1983, 83-1 CPD 497. Although Le Prix believes FAA should have sought verification, a bidder's intention to comply with the specifications must be determined from the face of the bid itself without resort to any explanations furnished after bid opening. Modutech Marine, Inc., B-207601, February 9, 1983, 83-1 CPD 144.

Finally, Le Prix questions why the contract performance was not suspended pending our decision and why FAA's report

was approximately 30 days late. In view of our above conclusion, Le Prix has not been prejudiced by the failure of FAA to suspend performance of the contract or the late report. In any event, there is no requirement that contract performance be suspended following a protest.

Accordingly, the protest is denied.

for *Harry D. Van Cleave*
Comptroller General
of the United States