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DECISION



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

FILE: B-213482

DATE: March 20, 1984

MATTER OF: Environmental Tectonics Corporation

DIGEST:

1. Rejection of a low bid as nonresponsive is proper where descriptive data required to be submitted with the bid for evaluation purposes demonstrates deviation from the specifications.
2. Allegation after bid opening that due to detailed nature of specifications there was no need for descriptive literature will not be considered since the allegation concerns an alleged defect in the solicitation and it should have been protested prior to bid opening.

Environmental Tectonics Corporation (ETC) protests the rejection of its low bid as nonresponsive and the award to American Sterilizer Company under invitation for bids (IFB) No. 263-83-B(65)-0211, issued by the National Institutes of Health (NIH) for the furnishing, installation and testing of a sterilizer with a microcomputer control with digital printer.

The protest is dismissed in part and denied in part.

The IFB required the submission of descriptive literature to establish, for purposes of bid evaluation and award, details of the products the bidder proposed to furnish as to materials, components, performance characteristics, construction assembly, operation, and dimensions. Prospective bidders were also advised that failure of descriptive literature to show that the products offered conformed to the specifications would require rejection of the bid.

Initially, ETC's bid was found to be nonresponsive under the above requirement for two reasons. In the NIH protest report, the contracting officer furnished several additional reasons. However, we need only discuss two of these reasons to resolve the protest.

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ETC admits that it offered a thermal printer rather than an impact printer called for by the specifications and that the printer only has a print speed of 90 lines per minute rather than 108 as required by the specifications. While ETC contends that its printer provides an equally satisfactory result, our Office has held that the submission of descriptive data, where the data is used for bid evaluation, is a matter of responsiveness and, where such data indicates a deviation from the specifications, rejection of the bid is required. See Zero Manufacturing Co., B-210823, June 28, 1983, 83-2 CPD 35. Also, see Zero Manufacturing Co., B-219123.2, April 15, 1983, 83-1 CPD 416. In view of ETC's admission that its descriptive literature demonstrated deviations from the specifications, we find that NIH properly rejected ETC's bid.

While ETC contends that neither its bid nor its descriptive literature took any material exception to the specifications, the fact remains that its bid did not show compliance with the specifications. Even if we were to interpret this contention as a blanket statement of compliance with the specifications, it would not cure the failure of the literature to show compliance. See Illinois Chemical Corporation, B-205119, February 9, 1982, 82-1 CPD 119.

Finally, ETC's allegation that there is no need for descriptive literature due to the detailed nature of the specifications is an allegation which under our Bid Protest Procedures must be protested prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1983). ETC's protest was not filed until after bid opening. ETC was aware when it received the solicitation that the specifications were detailed and that descriptive literature was required. It was incumbent on ETC during the period between receipt of the solicitation and bid opening to raise the question of the need for descriptive literature. See Calma Company, B-209260.2, June 28, 1983, 83-2 CPD 31.

The protest is dismissed in part and denied in part.

for Milton J. Sorolan
 Comptroller General
 of the United States