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DECISION



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

FILE: B-213739

DATE: June 28, 1984

MATTER OF: Schlegel Associates, Inc.

DIGEST:

1. GAO need not consider whether procuring activity incorrectly rejected protester's bid for failure to acknowledge an amendment where bid was otherwise nonresponsive.
2. Bid proposing equal product in response to brand name or equal solicitation is nonresponsive because it failed to include sufficient descriptive data to establish that product met one of the salient characteristics specified in the solicitation.
3. Protest which is not filed within 10 working days after protester knew of its basis for protest is untimely under 4 C.F.R. § 21.2(b)(2) and will not be considered.

Schlegel Associates, Inc. (SAI), protests the rejection of its low bid as nonresponsive for failure to acknowledge receipt of amendment No. 1 under invitation for bids (IFB) No. 83049(E) issued by the Food and Drug Administration (FDA), Rockville, Maryland. SAI contends that the amendment is immaterial and that the failure to acknowledge receipt was not a proper ground on which to reject the bid. However, it is not necessary for us to address this issue because the bid was otherwise nonresponsive.

The IFB solicited bids for a Varian model 6000 gas chromatograph with a model 11075 injector or equal and listed the salient characteristics of the brand name model which an equal product was required to meet. The IFB also required descriptive literature to show product equality and cautioned bidders that the agency would not be responsible for locating any information which is not identified in the bid or reasonably available. Among the salient characteristics, the IFB specified a nickel 63 capture detector with pneumatic and electronic components.

SAI offered the Spectra-Physics model 7100 gas chromatograph and the Tri-Vector model 2000 chromatography

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data system as an "equal" product. FDA technical experts evaluated SAI's equal bid and found that the descriptive literature furnished failed to establish that the equipment met the nickel capture detector characteristic. Therefore, FDA considers the SAI bid to be nonresponsive on this basis as well. SAI responds that the equipment offered meets all required specifications.

To be responsive to a brand name or equal solicitation, a bid offering an equal product must contain sufficient descriptive literature to permit the contracting activity to assess whether the equal product possesses each salient characteristic specified in the solicitation. It is not enough that the bidder believes his product is equal or makes a blanket statement that all salient characteristics are met. Rather, we have held that the responsiveness of an equal bid depends on the completeness of the information submitted or reasonably available. Clear Corp., B-208929, June 21, 1983, 83-2 C.P.D. ¶ 8.

Here, the standard commercial literature furnished with SAI's bid does not specify that the model offered contains the required nickel capture detector. With respect to detectors, the literature generally provides that each detector is state of the art, but fails to include any information on the desired detector. Therefore, we agree with the FDA that SAI's bid is nonresponsive because it failed to include sufficient descriptive material to establish that this salient characteristic would be met.

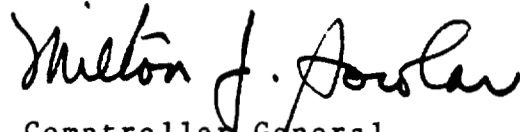
SAI also points out that the cover letter to amendment No. 1 referred to this formally advertised procurement as negotiated and that the bid rejection letter which FDA sent SAI states that bid opening took place on the date specified in the IFB as issued rather than amended. SAI thus concludes that this procurement was conducted improperly.

The FDA explains that the above inconsistencies were the result of clerical errors and that bid opening did, in fact, take place on the date specified in the amended IFB in accordance with the regulations governing formally advertised procurements.

In any event, SAI's protest concerning this matter is untimely. Our Bid Protest Procedures require that protests

be received in our Office or the contracting agency within 10 working days after the basis of protest is known. 4 C.F.R. § 21.2(b)(2) (1983). See Service and Sales, Inc., B-212850, October 11, 1983, 83-2 C.P.D. ¶ 439. Here, at the very latest, SAI knew of its basis for protest upon receipt of FDA's letter rejecting the bid which, as noted above, led SAI to believe that the procurement was conducted improperly. However, SAI did not protest this matter until more than 6 weeks after that letter was mailed. Accordingly, the protest is untimely and will not be considered on the merits.

The protest is denied in part and dismissed in part.



Acting Comptroller General
of the United States