

DECISION



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

FILE: B-214673

DATE: September 10, 1984

MATTER OF: Applied Electro Mechanics, Inc.

DIGEST:

Where the narrative and specifications in descriptive literature submitted with a bid of an allegedly equal item in a brand name or equal procurement establish that the firm is offering a 450-watt system that meets the salient characteristics in the IFB, but the literature also includes a picture of a 900-watt system, the bid is not ambiguous or otherwise nonresponsive if it is unreasonable to conclude that the inclusion of the picture qualified the offer of an acceptable 450-watt system.

Applied Electro Mechanics, Inc. (AEM) protests that the Department of the Army should have rejected as nonresponsive the bid submitted by Telectro Systems Corp. under invitation for bids No. DAAB07-84-B-0041 for 162 public address systems. We deny the protest.

Bids for the public address systems were solicited on a brand name or equal basis, with an AEM model specified as the brand name item. The solicitation listed a number of salient characteristics that items offered as equals had to meet, including a requirement for 450 watts of power. The invitation further required a firm offering an alleged equal to furnish with the bid descriptive material necessary for the government to determine whether the item met the salient characteristics and to establish exactly what the firm was offering.

Telectro, the only bidder other than AEM, offered its own 450-watt system as an equal to the AEM model. Telectro submitted one page of descriptive literature for its "450 Watts Portable Public Address System," which contained a picture of a system, a brief description, including reference to the system's 450-watt sound power, and a list of system components and specifications, again noting the output of 450 watts.

The Army evaluated Telectro's offer against the invitation's salient characteristics and found that the only deviation was that Telectro's model weighed 81.08 pounds, whereas 70 pounds was specified. The Army waived the deviation, however, because the brand name system offered by AEM weighed 82 pounds, and thus no firm was prejudiced by waiver. After a pre-award survey and the resultant finding that Telectro was capable of furnishing acceptable items, the Army accepted Telectro's bid of \$897,350.00. AEM bid \$1,974,127.20.

AEM argues that Telectro's bid was ambiguous and thus nonresponsive. AEM contends that both the system description and picture in its competitor's literature essentially were copied from AEM's own literature, and asserts that while Telectro's description, components and specifications identify an acceptable system, the picture on the same page is of a 900-watt system. AEM argues that the literature therefore does not establish exactly what Telectro was offering and what the government would be buying by award to that firm.

In response, the Army states that its technical personnel had no difficulty in determining from Telectro's literature that the firm's system met the salient characteristics, and "The picture of Telectro's product was viewed as an acceptable model which would meet the form, fit and function requirements of the salient characteristics."

The offer of an equal in a brand name or equal advertised procurement is responsive so long as the descriptive material submitted with the bid, or other information reasonably available to the contracting agency, is sufficient to enable the agency to determine what is being offered and whether it meets the listed salient characteristics. Environmental Conditioners, Inc., B-188633, Aug. 31, 1977, 77-2 CPD ¶ 166. Because the adequacy of the descriptive material and the quality of the product it describes are technical evaluations for the contracting agency's judgment, we will defer to the agency's determinations in those respects unless it is clear from the record that the descriptive material is ambiguous or evidences non-

B-214673

conformity with the salient characteristics. Le Prix Electrical Distributors, Ltd., B-212518, Dec. 27, 1983, 84-1 CPD ¶ 26. Such defective literature renders the bid non-responsive. Emerson Electric Co., B-212659, Nov. 4, 1983, 83-2 CPD ¶ 529.

Something is ambiguous, however, only if it is susceptible to more than one reasonable interpretation. The Kerite Company, B-212206, Aug. 10, 1983, 83-2 CPD ¶ 198. We do not believe that is the case here. The system description and specifications in Telectro's literature established that the firm was offering a 450-watt system. While the accompanying picture may have been of a 900-watt system, and while the Army apparently did recognize that fact, ^{1/} we do not believe it reasonable to suggest that Telectro was thereby qualifying its bid of a 450-watt system in any way, that is, was representing an offer of a system other than the one described in detail in its literature, both by narrative and by a listing of specifications.

In our view then, and in the Army's, the only reasonable interpretation of Telectro's bid was that even though the firm included the wrong picture in its literature, the firm's intent to furnish the 450-watt system described was clear and unequivocal, so that the acceptance of the bid legally would bind Telectro to supply such a system. Since the literature also established that Telectro's own model was equal to AEM's in terms of the necessary characteristics (AEM does not dispute this point), the bid properly was found responsive.

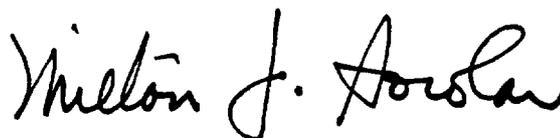
As to AEM's suggestion that Telectro copied from AEM's literature, we have compared Telectro's literature with the protester's and in fact the narratives and 900-watt pictures are practically identical. Nevertheless, even if Telectro created its data by resort to AEM's, the firm's bid technically was responsive as discussed above. See also Bell & Howell Company, Datatape Division, B-204791, March 9, 1982, 82-1 CPD 219 (where the literature in a bid properly found responsive consisted of a non-detailed drawing and an

^{1/} A 450-watt and a 900-watt system are similar in appearance, except that the latter shows two portable power sources.

B-214673

alleged parroting of the required salient characteristics). Moreover, the record shows that the Army conducted a comprehensive survey of Telectro's facility and capabilities and found the company responsible, that is, capable of furnishing equal items if awarded the contract. AEM does not argue that Telectro is not responsible and, in any case, our Office generally does not review a contracting agency's affirmative determination in that respect. See Brandhurst Inc., B-214829, June 26, 1984, 84-1 CPD ¶ 669.

The protest is denied.

A handwritten signature in black ink, reading "Milton J. Aorlan". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General
of the United States