

DECISION

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

FILE: B-218493 **DATE:** July 22, 1985
MATTER OF: Visual Instrumentation Corporation

DIGEST:

Where protester's descriptive literature in response to a solicitation specifying a brand name or equal product shows that the protester's equal product failed to conform to a salient characteristic listed in the solicitation, the bid was properly rejected as nonresponsive.

Visual Instrumentation Corporation (VIC) protests the rejection of its bid under invitation for bids (IFB) No. DAAD09-85-B-0022, issued by the United States Army Dugway Proving Ground (Army), Utah. VIC's bid was rejected because the product it offered did not meet certain requirements of the brand name or equal solicitation. We deny the protest in part and dismiss the remainder.

The IFB was issued for 10 camera systems. Each system was to consist of a "Camera, Redlake Locam Model 51" or equal, an "Exposure Control System, Apex Model B" or equal, and a "Timing Unit, Miletus, Model 7-1510K" or equal. Redlake Corporation was the low bidder and offered equal items; VIC was second low and also offered equal items. Redlake additionally had the third low bid offering the brand name items. The Army's technical review determined that Redlake's low bid and VIC's bid were nonresponsive because the offered timing units did not comply with paragraph C.2.3a (7)(a) of the specification, which set forth one of the salient characteristics that had to be met by the timing unit. Award was made to Redlake for the brand name products.

Paragraph C.2.3a (7)(a) states that the timing unit "must attach to and operate on above camera with provisions for detaching from this camera and operating remote (up to 10 ft.) or use on another camera with mating connector PTO 2A-16-26S." VIC proposed its own model 10-5110 timing unit as an equal product. The Army reports that the VIC timing

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unit has no provision for detaching from the camera, operating remote or using another camera via a mating VIC connector.

In its bid, VIC stated that each offered timing "unit is interchangeable to other Locam cameras with . . . aperture plate modifications." VIC alleges that it therefore complies with this "vague" specification, which contains no statement, restriction or comment concerning the type of "other" camera to which the timing unit must adapt.

The Army advises however, that the cameras presently being used do not have the necessary aperture plates to make VIC's proposed timing units interchangeable. Further, the Army states that if VIC's bid were accepted, the existing aperture plates in each camera would have to be replaced at a cost of \$2,500. Moreover, the Army advises that the cameras presently used at Dugway use a sixteen pin connector for attachment of the timing unit, a requirement specified in the IFB; however VIC's unit required eight pin connectors.

When a brand name or equal purchase description is used, it is incumbent upon the bidder who offers an "equal" product to establish that its product will meet the salient characteristics of the brand name product. Where it is clear from the bid that the offered item does not conform to the salient characteristics of the brand name product, the bid must be rejected as nonresponsive. The E.A. Kinsey Co., B-211832, July 11, 1983, 83-2 C.P.D. ¶ 75. VIC's bid, conditioning its timing unit's compliance with a salient characteristic on a modification to the cameras, which was not provided for in the solicitation, clearly was nonresponsive. Therefore, its rejection by the Army was proper.

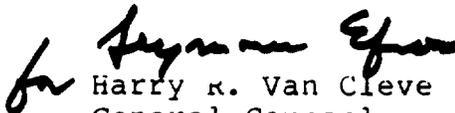
VIC also protests that the Army gave preferential treatment to Redlake because a representative from that company visited the using activity during the evaluation period and allegedly improperly discussed the procurement. However, the Army advises that although a representative of Redlake visited the agency on March 18, 1985, the solicitation was not discussed at any time. In any case, this action on the Army's part in no way affected the unacceptability of VIC's timing unit.

Finally, in response to the agency report, VIC takes issue with the Army's technical rejection of its bid on the grounds that the brand name product allegedly also does not comply with several of the IFB's salient characteristics.

VIC also alleges that the Army prepared restrictive specifications based upon the characteristics of a specific product which resulted in a de facto sole source procurement. Finally, VIC argues that the Army has never installed the brand name timing unit on a Locam 16mm camera so that the Army can only assume that the system will meet its operational needs.

These contentions are untimely under our Bid Protest Regulations. Protests based on alleged improprieties in a solicitation, such as the allegation that the specification resulted in a de facto sole source procurement and that the brand name timing unit was untested, must be filed prior to bid opening to be considered timely. 4 C.F.R. § 21.2(a)(1) (1985). Further, the allegations concerning Redlake's alleged noncompliance with the specifications are untimely since they were raised more than 10 working days after VIC was apprised of the award. 4 C.F.R. § 21.2(a)(2). Therefore, we will not consider these contentions.

The protest is denied in part and the remainder dismissed.

for 
Harry K. Van Cleave
General Counsel