

2-1-87



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tektronix, Inc.

File: B-225769

Date: June 8, 1987

DIGEST

Award to bidder offering a brand name product is improper where that product, without additional equipment not mentioned in awardee's bid, is nonresponsive to the salient characteristics set forth in the solicitation.

DECISION

Tektronix, Inc. protests the award of a contract to Biddle Instruments under invitation for bids (IFB) No. M00027-87-B-0004, issued by the United States Marine Corps for time domain reflectometers. Tektronix alleges that Biddle's brand name equipment was nonresponsive to the salient characteristics listed in the brand name or equal IFB.

We sustain the protest.

The solicitation, issued on January 12, 1987, requested bids to supply up to 450 (base and option quantities) "Tektronix model 1502, Biddle model 431 or equal" time domain reflectometers (TDRs). The solicitation described the required off-the-shelf equipment as a "portable, self-contained, solid-state cable tester that uses the time domain reflectometry . . . technique to identify and locate cable faults." According to the protester, the TDR applies pulses to the coaxial or multipair cable being tested; variations in the reflected voltage pulses caused by cable irregularities are detected and displayed on a cathode ray tube.

The Marine Corps received two bids in response to the solicitation. Biddle offered what it described as its model 431 for a total evaluated price of \$1,519,058.50, while Tektronix offered its model 1502 for \$1,880,603. After making an affirmative determination of responsibility, the agency made award to Biddle on February 19. Tektronix protested to our Office within 10 days of award, and the Marine Corps has directed Biddle to suspend performance

039143

pending our decision in accord with the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d) (Supp. III 1985).

Tektronix alleges that the Biddle model 431 TDR offered by the awardee is nonresponsive to the first salient characteristic set forth in the IFB, which required that the TDR set "shall have either a X-Y recorder or permanent scope trace storage capability for long-term signature analysis." Tektronix points out that in its own bid, it offered a Y-T chart recorder, for permanent scope trace storage, in addition to the brand-name Tektronix TDR. Tektronix does not allege, and it is not clear from the record, that it could have offered a lower price than Biddle if it did not need to supply the recorder. Rather, Tektronix asserts that it should receive the award as the only responsive bidder.

The Marine Corps informs us that Biddle enclosed with its bid descriptive literature describing its 430 Series TDR. The detailed description of the Biddle model 431 therein neither states that the unit has an X-Y recorder nor describes any capability for storage of the scope trace. However, under the heading "GENERAL SPECIFICATIONS COMMON TO ALL MODELS," the literature provides that:

"All Biddle Series 430 Cable Test Sets contain a built-in memory which can store a scope trace for up to 48 hours . . . even with the set turned off. During the 48-hour period, the stored trace can be recalled and displayed by operation of a front panel switch.

.

"These sets are also all equipped with built-in circuitry that interfaces with a Model 437 Digital Data Logger accessory to provide permanent storage of scope traces on a mini-cassette for later comparison, evaluation or training. One or more tapes can store the history of an entire cable network, providing ready access when needed.

.

"The memory feature also enables convenient review by management since the trace of the questionable section can be

stored in the memory for up to 48 hours."

A separate section of the descriptive literature describes in detail the model 437 Digital Data Logger. However, nowhere in its bid did Biddle state that it was also offering that accessory.^{1/}

The Marine Corps acknowledges that the Biddle model 431 TDR lacks an X-Y recorder; however, the agency maintains that the unit has a permanent scope trace storage capacity. In particular, the agency contends that:

"[T]hough the Biddle 431 can store a scope trace up to 48 hours when the set is turned off, its memory is indefinite while turned on. Also, as a standard feature the Series 431 has the capacity for recording the scope traces on [a] permanent clear plastic sheet placed over the screen and outlined with a grease pencil."

The protester, however, contends that this is not sufficient to meet the salient characteristic requirement for permanency, so that the Marine Corps should have rejected the bid as nonresponsive.

A bid is responsive only if it is an unequivocal offer to meet all of the material terms and conditions of the IFB. See Heyl & Patterson, B-220369, Feb. 5, 1986, 86-1 CPD ¶ 130. Where unsolicited descriptive literature contains the same model number or name as the equipment offered in a bid, contracting officials may not disregard it. If the literature describes a product that does not conform to a material requirement of the IFB, the literature qualifies the bid and renders it nonresponsive. See Caprock Vermeer Equipment, Inc., B-217088, Sept. 3, 1985, 85-2 CPD ¶ 259.

Although Biddle, as a brand name offeror, was not required to submit descriptive literature, it nevertheless submitted literature that described the product offered in its bid, and, accordingly, such literature could not be disregarded by the agency. As indicated above, the descriptive

^{1/} We note in this regard that Tektronix has provided our Office with a copy of a November 1986 Biddle price list for its 430 series TDR. In that publication, Biddle priced its model 431 TDR at \$5,240 and its model 437 Digital Data Logger at \$4,305. In its bid, on the other hand, Biddle offered to supply its model 431 TDR at a unit price of \$3,248.

literature provided that a "built-in memory" could "store a scope trace for up to 48 hours . . . even with the set turned off." If the set is turned on, then according to the descriptive literature, the internal rechargeable battery will only provide for 5 to 7 hours of operation. Although the Biddle model 431 TDR may in fact be able to store a scope trace indefinitely if the unit remains turned on and connected to an external power source, we fail to see how this would meet the requirement in the first salient characteristic for a "portable self-contained" unit.

In addition, Tektronix points out that the cathode ray tube display screen on the Biddle model 431 TDR measures only 2 by 2.75 inches. It questions whether the alternate method of obtaining a permanent record suggested by the Marine Corps, i.e., a free-hand drawing of the scope trace on a clear plastic overlay, possibly made under adverse conditions in the field, would provide a meaningful, accurate record that could be used for long-term signature analysis. In support of its position, the protester has submitted affidavits from two professors of engineering purportedly familiar with the operation of TDRs. It also points out that there was no indication in Biddle's bid that it was offering anything more than a model 431 TDR, and that the accompanying description of the various means for recording scope traces on that model did not mention plastic overlays.

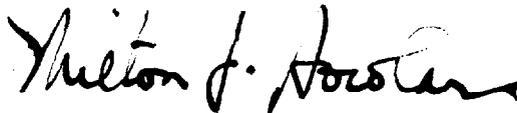
In our opinion, there was an ambiguity in the solicitation, created by the disparity between the specifications of the brand name product and the salient characteristics: the Marine Corps did not make clear whether bidders could offer only the brand name product or whether they were required to offer both a brand name product and appropriate accessories. Nevertheless, a product that fails to conform to the salient characteristics in a brand name or equal solicitation must be rejected even though it is the brand name product. See Vista Scientific Corp., Mar. 31, 1976, 76-1 CPD ¶ 212; cf. Display Sciences, Inc., B-222425, July 9, 1986, 86-2 CPD ¶ 49, and B-222425.2, Aug. 26, 1986, 86-2 CPD ¶ 223, aff'd, B-222425.3, Oct. 1, 1986, 86-2 CPD ¶ 371. Since Biddle's bid was nonresponsive to the requirement in the salient characteristics for either an X-Y recorder or permanent scope trace storage capability for long-term signature analysis, the bid was ineligible for award.

Tektronix contends that Biddle's bid was nonresponsive on two additional grounds: Biddle allegedly failed to comply with the solicitation requirements that offerors submit with their bids (1) a certification that the equipment complies with specified military maintenance standards and (2) two copies of their commercial manual. The Marine Corps

responds that Biddle's bid in fact included a certificate of maintainability, and that although Biddle did not submit copies of its commercial manual with its bid, the agency viewed this failure as no more than a minor informality which it could waive. In view of our conclusion that Biddle's bid was nonresponsive on other grounds, and thus ineligible for award under this solicitation, we need not consider these alleged deficiencies.

We sustain the protest. Since the Marine Corps maintains that Biddle's model 431 TDR satisfies its minimum needs at a price approximately \$350,000 less than that offered by Tektronix, by letter of today to the Commandant of the Marine Corps, we are recommending that the agency resolicit under specifications reflecting only those minimum needs. This includes resolving any inconsistency between the brand name equipment and the salient characteristics set forth in the IFB. Further, if the plastic overlay method is an acceptable alternative to permanent storage, the solicitation should so state.

Following the resolicitation, if appropriate, the agency should terminate the awarded contract and enter into a new one. If Biddle remains entitled to the contract, but its bid is less than its current contract price, the contract should be modified accordingly. See Federal Computer Corp., B-223932, Dec. 10, 1986, 86-2 CPD ¶ 665.



Acting Comptroller General
of the United States