



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Newport Electro-Optics Systems
File: B-228276.2
Date: December 17, 1987

DIGEST

Rejection of protester's bid for the supply of an "equal" product as nonresponsive for failure to meet one of the salient characteristics of the brand-name product is not objectionable where an important qualifying phrase found in solicitation's specification was omitted from the protester's otherwise identical specification for its own product and where descriptive brochures submitted with protester's bid reasonably could be read, consistent with the specification omission, as indicating that protester's product would not be constructed as to meet the government's needs.

DECISION

Newport Electro-Optics Systems protests the award of a contract to another offeror under invitation for bids (IFB) No. 263-87-B-(48)-0094, issued by the National Institutes of Health (NIH) for the furnishing of a laser scanning system.

We deny the protest.

NIH issued this IFB for the furnishing of a two-axis, acoustic-optic laser scanning system to be used in a new microscope. The solicitation specifications were of the brand name or equal type; salient characteristics of the brand-name product were listed; and the IFB contained the standard "Brand Name or Equal" clause which advised bidders of "equal" products:

"to furnish . . . all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the requirements of the [IFB] and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award."

040890

Of the two bids received, one was from Chesapeake Laser Systems, Inc. (CLS), the brand name manufacturer, at \$64,850; the other was from the protester, who bid \$40,500 for an "equivalent" laser scanner. Enclosed with Newport's bid were three pages of "specifications" for the product it was offering, which closely tracked the list of salient characteristics of the brand-name product contained in the IFB, and three brochures descriptive of the company and its products.

After evaluating the bids the contracting officer awarded the contract to CLS. In its notification of award, NIH informed Newport that its bid was found to be nonresponsive with respect to salient characteristic C.1.7. This salient characteristic of the brand-name product as it appears in the IFB and the protester's corresponding description of its own product in its bid are as follows:

<u>IFB</u>	<u>Protester's Bid</u>
"The horizontal AOBD [Acousto-Optic Beam Deflector] shall be driven by a frequency chirp and the vertical AOBD shall be driven by a constant frequency for each beam position. Frequencies driving both AOBD's shall be generated digitally - <u>not by analog means.</u> " (Emphasis added.)	"The horizontal AOBD is driven by a frequency chirp, and the vertical AOBD by a constant frequency for each beam position. Frequencies driving both AOBD's are generated digitally."

Missing from the protester's recitation of this specification requirement is the phrase "not by analog means."

In addition, the contracting officer's technical advisers reported to her that the descriptive literature furnished with Newport's bid indicates that an analog device is used in the frequency generation chain, although a digital input controls the analog device. Since the frequency generation was not all-digital, the specification requirement was not met.

Newport protested the award to NIH, alleging that the rejection of its bid was improperly based on implications garnered from the general purpose literature accompanying the bid rather than the specific recitation of specifications set out in Newport's bid. In any event, Newport further alleges that the standard product described in its

literature complies with the salient characteristics required by NIH, based on an interpretation of the NIH specifications which would not preclude a combination of digital and analog components. Newport also argues that the award was in error because its bid was low by more than 40 percent.

Newport filed a protest with our Office, on similar grounds, before the contracting officer had responded to the initial agency protest. In its report, NIH states that it requires a system that generates an exclusively digital signal "not by analog means." NIH stresses that the successful bidder's equipment uses new technology and is completely digital. CLS uses no analog processes to generate the frequencies, unlike Newport. NIH further contends that it properly considered the literature submitted by the protester with its bid to arrive at its conclusion that the bid was nonresponsive.

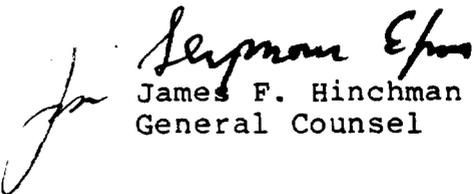
To be responsive to a brand name or equal solicitation, a bid offering an allegedly equal product must contain sufficient descriptive material to permit the contracting officer to assess whether the offered alternative possesses the salient characteristics specified in the solicitation. Rocky Mountain Trading Co., B-2212060, Jan. 24, 1986, 86-1 C.P.D. ¶ 88. If the descriptive literature or other information reasonably available to the agency does not show compliance with all salient characteristics, the bid must be rejected. HEDCO, Hughes Electronics Devices Corp., B-221332, Apr. 7, 1986, 86-1 C.P.D. ¶ 339. Material deviations contained in the bid will render that bid nonresponsive despite a blanket statement submitted in the bid that the item offered will comply with the specification. LogE/Spatial Data Systems, Inc., B-205016, May 17, 1982, 82-1 C.P.D. ¶ 465. Furthermore, a mere verbatim repetition of salient characteristics in a brand name or equal bid is per se insufficient to support a protester's assertion that its bid complies with the solicitation. See Interand Corporation, B-224512.2, Dec. 31, 1986, 87-1 C.P.D. ¶ 5.

In this case, we believe that the agency's determination that Newport's bid was nonresponsive was reasonable. NIH specifically requires digitally driven frequency generators, and described its needs through the deliberate insertion of the phrase "not by analog means" in the IFB. The contracting officer's technical adviser states that this language was included in the solicitation to insure the supply of a purely digital system, with no analog components, because the particular use to which the scanner would be put requires the utmost accuracy, reliability and stability. Thus, the existence of analog components within Newport's digital system, as evidenced by its descriptive literature,

does not meet the salient characteristic required. Where, as here, the descriptive literature evidences nonconformance with specifications, rejection of the bid is required, even if the offered product could be modified to possess, or does in fact possess, the required characteristics. See Baker Company, Inc., B-216220, Mar. 1, 1985, 85-1 C.P.D. ¶ 254.

Although Newport maintains that NIH ignored the company's recitation in its bid of the specifications of the product it proposed to supply, we have held that merely "parroting" the language of an IFB is insufficient for evaluation purposes. See Interand, supra. Therefore, NIH properly considered Newport's descriptive literature in evaluating the bid and determined that the product did not possess the salient characteristics required. This was especially appropriate, we believe, where Newport's specifications omitted the qualifying phrase "not by analog means" contained in the corresponding provision of the IFB. The bid was therefore properly rejected by the agency as nonresponsive.

Newport's assertion that it should be awarded the contract because its bid is lower is without merit. A nonresponsive bid may not be accepted even though it would result in monetary savings to the government since its acceptance would be contrary to the competitive bidding system. Baker Company, Inc., B-216220, supra.


James F. Hinchman
General Counsel