



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: JoaQuin Manufacturing Corp.

File: B-228515

Date: January 11, 1988

DIGEST

1. Where an invitation for bids required descriptive literature sufficient to determine whether the offered item conforms to the technical specifications and bidders were advised that failure to do so would require rejection of their bids, the procuring agency properly rejected as nonresponsive a bid that included descriptive literature showing nonconformance despite blanket statement of compliance also contained in the bid.
2. Even if protester's contention that its product has been found acceptable under similar contracts is true, protester's bid was properly rejected as nonresponsive since an agency's waiver of a requirement on a prior procurement does not affect the rejection of a nonresponsive bid under the current procurement.
3. Protest that product offered by awardee is also nonresponsive is denied where descriptive literature submitted by awardee shows compliance with solicitation requirements.
4. Allegation that specification contained in solicitation is restrictive and reflects bias toward awardee's product which was initially raised in protester's comments to agency report is untimely. Arguments regarding solicitation improprieties which are apparent from the face of the solicitation must be filed prior to bid opening.

DECISION

JoaQuin Manufacturing Corp. protests the rejection of its bid as nonresponsive and the award of a contract to Vertex

041037

plastics, Inc. under invitation for bids (IFB) No. DTFA06-87-B-30090, issued by the Federal Aviation Administration (FAA) for fiberglass equipment shelters. JoaQuin's bid was rejected because the descriptive literature it submitted indicated the shelter it offered did not comply with the IFB specifications. JoaQuin contends that FAA erred in rejecting its bid as its descriptive literature specifically stated that it was offering a product which met or exceeded the specifications and because the shelters have been found acceptable under similar solicitations. JoaQuin also contends that Vertex's bid is nonresponsive and that the solicitation specifications are restrictive and reflect a bias toward Vertex's product.

We deny the protest in part and dismiss it in part.

The IFB required that bidders submit with their bids descriptive literature to demonstrate that the product the bidder intended to furnish met each of the listed requirements outlined in the drawing attached to the solicitation. One of the requirements specified that the equipment shelters be of "fiberglass-reinforced continuous polyester-urethane construction with joints only at floor." Bidders were also advised that failure to submit the required descriptive literature would result in the rejection of the bid as nonresponsive. Fifteen bids were received. JoaQuin's bid was rejected as nonresponsive and award made to the next lowest bidder, Vertex.

FAA reports that it rejected JoaQuin's bid primarily because the descriptive literature submitted by the firm showed its shelter was constructed by a method which required joints between the shelter's walls and ceiling panels while the solicitation required that joints be only at the floor.

Where descriptive literature is required to establish the bid's conformance with the specifications, and bidders are so cautioned, the bid must be rejected as nonresponsive if the literature submitted fails to show clearly that the offered product conforms to the specifications. Toroid Corp., B-226816, June 26, 1987, 87-1 CPD ¶ 635. Here, the agency concludes, and the protester does not disagree, that its literature shows that the shelters offered were constructed in such a manner that they will have joints at locations other than the floor. Since the solicitation drawing clearly required that there be joints only at the floor, the descriptive literature made the bid nonresponsive.

Moreover, with respect to the general statement in JoaQuin's bid that its product would meet or exceed the specifications, such a blanket statement of compliance contained in a

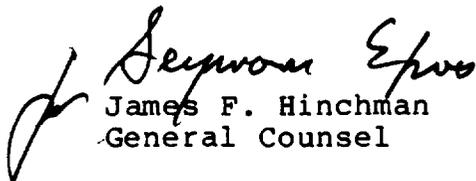
bid which is otherwise noncompliant with a material requirement is not sufficient to make the bid responsive. Systems Integrated, B-225700, May 8, 1987, 87-1 CPD ¶ 494.

Additionally, we find no merit in JoaQuin's argument that its product has been found acceptable under similar procurements and therefore should be found responsive in this procurement. The agency denies that it has accepted the shelter offered here under the specifications contained in this IFB. Moreover, the fact that an agency may have waived a requirement on a prior procurement does not affect the rejection of a nonresponsive bid under a current procurement. Inscom Electronics Corp., B-225858, Feb. 10, 1987, 87-1 CPD ¶ 147.

The protester also argues that the Vertex bid should have been rejected as nonresponsive because the construction of the Vertex shelter, which, according to the protester, uses a vertical splice, apparently does not meet the requirement that joints be located only at the floor. The literature submitted by Vertex states that the walls and roof of its shelters are formed as a single unit which is bolted to the floor. Hence, we have no basis upon which to object to the agency's conclusion that the Vertex bid was responsive to the solicitation requirement regarding the location of joints.

Finally, we dismiss as untimely JoaQuin's contention first raised in its response to the agency report that the specifications for shelters are restrictive and reflect a bias for shelters offered by Vertex. Under our Bid Protest Regulations, a protest of an alleged solicitation impropriety apparent from the face of the solicitation must be filed with either the contracting agency or our Office prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1987). Here, the FAA's requirement for shelters with joints only at the floor was clearly contained in the drawing attached to the solicitation. Any protest regarding this requirement should have been filed prior to bid opening. JoaQuin's protest of this requirement raised initially in its comments to the agency's protest report is untimely and will not be considered.

The protest is denied in part and dismiss in part.


James F. Hinchman
General Counsel