



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Mid-Florida Corporation  
File: B-228372  
Date: January 22, 1988

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### DIGEST

1. Protester's bid was properly found to be nonresponsive to a brand name or equal invitation for bids where protester's bid for the supply of an "equal" item failed to show through its descriptive literature that the offered product complied with numerous salient characteristics specified in the solicitation.
2. Allegation by protester that awardee's brand name product is nonresponsive because it does not offer the same brand name specifications required by the solicitation is meritless where, as of the time of bid opening, the brand name product complied with the salient characteristics and the contracting officer had no reason to believe that there was an exception to the specifications or a disparity between the invitation for bids and the brand name product.

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### DECISION

Mid-Florida Corporation (MFC) protests the award of a contract to another offeror under invitation for bids (IFB) No. 87-116, issued by the Centers for Disease Control (CDC) for the furnishing of cryobiological storage systems.

We deny the protest.

The solicitation contained specifications of the brand name or equal type, listed salient characteristics of the brandname item and advised offerors of "equal" products:

". . . it is incumbent on the bidder to provide information that the offered 'or equal' item meets all salient characteristics of the brand name item. . . . [F]ailure to insert the required data . . . or failure to provide by specific reference and attachments to the bid, the necessary data

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. . . may be cause for rejection of the bid in its entirety."

Three bids were received. One bidder, Specialty Gases Southeast (SGS), offered the brand name system for \$191,500. The other two bidders, including MFC, offered "equal" cryobiological systems; MFC's low bid was for \$175,000.

MFC's bid was evaluated to determine whether its offered product complied with all the salient characteristics specified in the IFB. Although MFC supplied a brochure explaining the characteristics of the offered system, its bid was rejected as nonresponsive because it did not contain sufficient descriptive literature to demonstrate whether the "equal" product met all the salient characteristics. The other "equal" bid was rejected on the same ground. Thus, the contract was awarded to the brand name offeror, SGS.

In its protest to our Office, MFC's first argument is that its equipment meets or exceeds the specifications applicable to the brand name product. Thus, MFC is contending that its bid is, in fact, responsive. We find MFC's bid was properly held to be 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-221060, Jan. 24, 1986, 86-1 CPD ¶ 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 CPD ¶ 339.

CDC found MFC's bid to be nonresponsive because it failed to show compliance with numerous salient characteristics. As only two examples, the IFB requires that the system include a temperature monitor with a digital readout and include a lockable lid. MFC's bid merely repeats these salient characteristics verbatim. MFC's documentation, consisting of a leaflet printed on both sides, does not mention a lockable lid and there is no evidence of compliance with the temperature monitor with digital readout requirement. Since MFC has failed to show that its descriptive literature evidences compliance with the salient characteristics required, the bid was properly found to be nonresponsive.

MFC also argues that even if its bid is nonresponsive, there should be a resolicitation because SGS's bid is

nonresponsive as well.<sup>1/</sup> MFC asserts that the brand name equipment to be furnished by SGS, the Taylor-Wharton Model 27K, does not meet the following brand name salient characteristics:

"(8) Liquid Level Control Features:

"(a) Key lock on/off switch-key can be removed to prevent tampering and accidental shut down of control system. Key locks should all be different, but with a master key.

"(b) Stop/Fill Stop Control Indicator LEDES [light-emitting diodes] for:

High Level Alarm  
Low Level Alarm  
Filling  
Alarm On/Mute"

According to MFC, the Model 27K offered by SGS does not feature either an alarm on/mute function or a key lock on/off switch. In support of its contention, MFC has submitted a copy of the operations manual for the Model 27K in which, allegedly neither of the above features is mentioned. Since SGS's bid did not supply literature or otherwise show compliance with the key lock modification, MFC argues, SGS's bid should have been rejected as nonresponsive.

The agency asserts that when the award was made, the contracting officer was acting in the good faith belief that the disputed salient characteristics were standard features of the brand name system, requiring no modifications to it. In its comments to the protest, SGS asserts that the alarm on/mute functions are present in the Model 27K. Although SGS concedes the key lock mechanism was not a standard

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<sup>1/</sup> In its comments on the agency report, MFC states that it "will not continue to argue" the issue of the responsiveness of its bid based on the contracting officer's statement that while the "equal" product offered by MFC may well meet or exceed the specification requirements, the government could not determine that from the descriptive literature provided. The protester therefore appears to recognize that the agency's rejection of its bid was reasonable. It continues to maintain, however, that SGS's bid also should have been rejected.

feature of the Model 27K, it claims it was installed immediately upon receipt of the solicitation and is now a standard feature.

First, MFC's contention regarding the alarm on/mute switch is without merit. MFC concedes in its comments to the agency report that the Taylor-Wharton Model 27K does have an alarm on/mute feature, but argues that there is no indicator LED for the Alarm on/mute function, as required by the IFB. However, a careful reading of the Taylor-Wharton Model 27K operations manual shows that indicator lights, which warn an operator that the audible alarm system is deactivated and silenced, do exist. The manual states on page 7:

"NOTE: All alarm conditions activate the corresponding indicator lights in a flashing mode and sound the audible alarm . . . .

". . . Pressing the MUTE switch silences the audible alarm [and] changes the lighted alarm indicator to a steady mode . . . ." (Emphasis added.)

This feature appears to satisfy the alarm on/mute indicator function required by the IFB.

Secondly, MFC contends that the Model 27K contains no key lock on/off function. When a solicitation sets forth particular features of a brand name item they are presumed to be material and essential to the government's needs. VARTA Batterie AG, B-225484, Mar. 19, 1987, 87-1 CPD ¶ 311. We have also held that a product that fails to conform to the salient characteristics of the brand name or equal solicitation must be rejected even though it is a brand name product. Tektronix, Inc., B-225769, June 8, 1987, 87-1 CPD ¶ 580.

Moreover, in procurements where the government specifies salient characteristics which go beyond the brand name, the brand name offeror's bid must be rejected if it does not show compliance with, or takes exception to the modified salient characteristics. Tel-Med Information Sys., B-225655, June 2, 1987, 87-1 CPD ¶ 561.

In this case, however, as of the time of bid opening, SGS the name brand bidder, offered a product which fully complied with all of the salient characteristics required by the IFB. SGS took no exception to any of the specifications. The minor key lock modification was made by SGS immediately after receipt of the solicitation; this modification involved nothing more than substituting a key lock switch for a toggle switch; no modification to the

electrical system was made. Thus, at bid opening, the key lock feature conformed to the salient characteristics and the contracting officer had no reason to believe that there was an exception to the key lock requirement or a disparity between the IFB and the brand name model. We therefore think this case is distinguishable from those such as Tel-Med Information Sys., B-225655, supra, in which we found that the brand name bidder had taken clear exception to the salient characteristics in dispute, thus making the bid nonresponsive, or Tektronix, Inc., B-225769, supra, where we found the brand name bidder's equipment to be nonresponsive since it never possessed the required characteristics, 87-1 CPD ¶ 580 at 4. In SGS's case, it took no exception and the Model 27K conformed to the specifications in all respects.

Therefore, we deny the protest.

*JFH*  
*Seymour E. Hinchman*  
James F. Hinchman  
General Counsel