



The Comptroller General
of the United States

Washington, D.C. 20548

M. J. ...

Decision

Matter of: AZTEK, Incorporated

File: B-228376

Date: February 5, 1988

DIGEST

In a "brand name or equal" procurement, the offeror of an equal product has the burden of proving that the product is equal to the brand name product. This burden is not met by the submission of a printed description of the product which gives no indication of compliance with the solicitation's list of salient characteristics of the brand name product. The fact that the protester's proposal and its amendments promised blanket compliance does not take the place of technical descriptions of the approach used by the protester to meet the salient characteristics.

DECISION

AZTEK, Incorporated protests the rejection of its proposal for a slide and viewgraph system submitted to the Naval Air Development Center, Department of the Navy in response to solicitation No. N62269-87-R-0382. This was a brand name or equal procurement and AZTEK proposed to provide products equal to that of the Genigraphics Corporation, which manufactured the brand name products. The Navy rejected AZTEK's proposal because it could not determine from the descriptive literature submitted that the products were equal to the brand name product. We deny the protest.

The solicitation requested offers on eight line items of audiovisual equipment and related services and stated that award would be made to the offeror with the lowest price and an acceptable technical proposal. Line item 0001 was the basic requirement, an interactive graphic arts production system to be used in the creation and production of color slides and viewgraphs. Line item 0001 listed nine sub-items, each of which described a product of Genigraphics. Line item 0001AB was a high resolution "pin registered" film recorder, a major component of the system. Offerors were instructed to provide the listed Genigraphics products or products that were equal.

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The solicitation stated that "equal" products would be considered if they "are determined by the government to fully meet the salient characteristics referenced in" the RFP. Those offering equal products were instructed 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 salient characteristics requirements of the [RFP] and (ii) establish exactly what the offeror proposes to furnish and what the government would be binding itself to purchase by making an award. . . . If the offeror proposes to modify a product so as to make it conform to the requirements of the [RFP], he shall (i) include in his proposal a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications."

Among the salient characteristics listed for a product equal to the subline item 001AB brand name product (Genigraphics Model PS-4000 High Resolution Pin Registered Film Recorder) was a film recorder capable of recording directly onto 35 millimeter (mm) slides, large format rolls or sheet film. Both the large formats and the 35mm films had to feed automatically into the recorder. The recorder had to be capable of preprogrammed, unattended operation with interactive changing from 35mm to 7" x 9" viewgraph formats. The film recorder also had to have a pin-registered 35mm camera that was able to position film accurately within plus or minus .0002 inches and comply with specific image size, raster scan sensitivity, resolution, linearity and distortion, slide throughput time, electrical and environmental requirements.

Proposals were received by August 10, 1986, the closing date for receipt of proposals, from Genigraphics and AZTEK, whose prices were \$312,798 and \$233,686, respectively.

Genigraphics' proposal was found to be capable of being made acceptable with a few minor clarifications regarding site preparation and training requirements. On August 25, 1987, Genigraphics was advised by the Navy to submit additional information regarding the deficiencies and Genigraphics promptly complied. Later Genigraphics lowered its price to \$296,798.

AZTEK's proposal, after stating that it was completely compliant with the listed salient characteristics, gave very few details as to how this was accomplished. For example,

the AZTEK proposal identified AZTEK's Film Station 8000 (FS 8000) as not only meeting all of the requirements for the high resolution pin registered recorder but exceeding many of the requirements. The proposal further stated that the FS 8000 was capable of imaging 7" x 9" viewgraphs, 9-1/2" roll film, Ektachrome 200 and 100 35mm slides and that it could be "preprogrammed for unattended operation and interactive changing from various film formats." The only descriptive literature attached to the proposal, however, was a document entitled "AZTEK 1987 PRODUCT FAMILY TECHNICAL INFORMATION". The description of the FS 8000 in this document gave no hint that it could process anything other than 35mm slides and there was no information showing how compliance with the other requirements was obtained.

The Navy determined that this aspect of the proposal was insufficient to prove that the FS 8000 was equal to the brand name product.^{1/} The Navy states that it called AZTEK on August 11 and asked for additional descriptive literature concerning the products offered by AZTEK.^{2/} The Navy again called AZTEK on August 25 and reiterated the need for descriptive material and specifically designated the RFP requirements for which descriptive literature was required.

By mailgram to AZTEK dated August 26, the Navy confirmed in detail the clarifications needed to prove the equality of AZTEK's products, and, among other things, pointed out that the literature did not address whether the recorder was capable of interactive operation between 35mm and 7" x 9" viewgraph formats; whether large roll formats and 35mm films would feed automatically into the FS 8000; or whether the FS 8000 was capable of processing 7" x 9" viewgraph format. In addition, the mailgram advised AZTEK that its descriptive literature indicated that the FS 8000 had "precision accuracy," but did not mention that this was a pin registered camera as required by the specifications and that the literature did not address the 35mm pin-registration requirement of plus or minus .0002 inches. The mailgram asked for clarification on these and many other points and suggested that AZTEK review and comply with the RFP's brand name or equal clause.

^{1/} The Navy also found the proposal to be deficient in a large number of other areas. Our discussion will be limited to high resolution pin registered film recorder, since AZTEK's proposal never demonstrated its compliance with RFP requirements in this regard.

^{2/} AZTEK claims a request for information was only made on August 14.

On September 9, the Navy received AZTEK's response dated September 1, 1987, which again claimed that the FS 8000 met all requirements for the high resolution pin-registered recorder but this time stated that a pin registered camera was included. The response also assured that the FS 8000 was fully compatible with the system controller, was capable of imaging 8" x 10" viewgraphs and pin-registered 35mm slides, as well as unattended interactive changing between 35mm and 7" x 9" viewgraph formats. However, other than parroting the specifications AZTEK provided no detailed descriptive literature which demonstrated that the FS 8000 met the RFP's salient characteristics.

In brand name or equal procurements, the procuring agency is responsible for evaluating the data submitted by the offeror and ascertaining if it provides sufficient information to determine the acceptability of the offeror's products as equal to the name brand products and we will not disturb this determination unless it is shown to be unreasonable. Physio Control Corp., B-224491, Oct. 17, 1986, 86-2 CPD ¶ 467. The protester's burden of affirmatively proving the equality of its products is not met when it fails to submit sufficient information to establish that its product is either identical or equal to the brand name product. Dantronics, Inc., B-222307, June 30, 1986, 86-2 CPD ¶ 17. Moreover, blanket statements of full compliance or the protester's strong belief that its product is functionally equal to the name brand product are not enough; rather, the protester must affirmatively demonstrate that equivalency. Wayne Kerr, Inc., B-217528, Apr. 18, 1985, 85-1 CPD ¶ 445. Repeating the salient characteristics or restating them in more detail is no better than a blanket offer of compliance. Interand Corp.--Reconsideration, B-224512.3; B-224512.4, Apr. 17, 1987, 87-1 CPD ¶ 421.

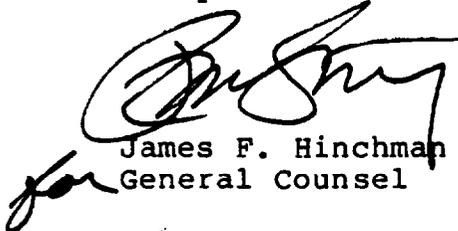
In our view, the material submitted by AZTEK consisted of too many blanket statements of compliance; the proposal did not show that compliance with specification requirements was achieved and contained too few direct answers to the clarification requests by the Navy. We find no merit to AZTEK's citation of its Product Family Overview that was attached to its proposal as being adequate descriptive literature because the FS 8000 description in both versions--the May 7, 1987, revision submitted with the proposal and the July 25, 1987, revision submitted with its answer to the Navy's report--are identical and give no indication that the FS 8000 can handle anything but 35mm slides. No mention in this literature was made of a capability to handle 7" x 9" viewgraphs. Moreover, this literature did not show that AZTEK's system could interactively process 35mm and 7" x 9" viewgraphs or how the pin

AZTEK's "precision registered" film recorder. Also, AZTEK provided no explanation as to when or how the FS 8000 described in the "AZTEK 1987 PRODUCT FAMILY" document was modified to acquire these additional capabilities required by the specifications, but only stated, without supporting literature, that it could meet these requirements. Based on the foregoing, we believe that the Navy reasonably concluded that AZTEK did not show that it can meet the solicitation requirements.

It is notable that AZTEK was clearly advised what it would have to provide to establish the equivalency of its products to the name brand products and each time failed to comply completely. AZTEK claims that it did not have much time to respond to the specific written concerns raised by the Navy, since it could not respond to the Navy's verbal request for further descriptive literature without a written amendment to the solicitation. This claim is unfounded for two reasons. First, the RFP clearly advised AZTEK of the descriptive literature requirement, and the Navy's request for further information was merely to obtain compliance with the RFP. Second, it is clear that discussions on a negotiated procurement need not be in writing, but may be verbal, to sufficiently apprise an offeror of how its proposal should be revised to be considered acceptable. See ATI Industries, B-215933, Nov. 19, 1984, 84-2 CPD ¶ 540. In these circumstances, the Navy sufficiently apprised AZTEK of the need for more specific descriptive literature and it had no obligation to provide another opportunity for AZTEK to eliminate its proposal's deficiencies.

Finally, AZTEK claims that Genigraphics' proposal also does not demonstrate its compliance with the same requirements which were the stated cause for rejecting AZTEK's proposal. However, since Genigraphs offered, without exception, the brand name products, it was not required to demonstrate compliance with the stated salient characteristics. Moore Special Tool Co., Inc., B-228498, Jan. 29, 1988, 88-1 CPD ¶ ____.

The protest is denied.


James F. Hinchman
General Counsel