



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: AZTEK, Inc.
File: B-229897
Date: March 25, 1988

DIGEST

A bid proposing an "or equal" system under brand name or equal invitation for bids is nonresponsive where the descriptive literature submitted with the bid fails to establish that the system would meet all of the listed solicitation requirements.

DECISION

AZTEK, Inc. protests the rejection of its bid for a graphics design station submitted in response to invitation for bids No. F04684-87-BA039 issued by Vandenberg Air Force Base. AZTEK also alleges that the solicitation's specifications were unduly restrictive.

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

The solicitation was issued on a brand name or equal basis for a Genigraphics Model No. 100-D-Plus or equal system. The solicitation specified that any system offered as an equal must be able to communicate via modem with Genigraphic Models SG-1, SG-2 and PS-4000. The solicitation further specified the salient characteristics of the system components including, among others, the design station, computer, key-boards, color palette, video display, drawing table/cursor, film recorder, and 35mm camera. It also contained the standard brand name or equal clause, which warned bidders to furnish all descriptive material necessary for the contracting activity to determine whether the product offered met the salient characteristics requirements of the solicitation.

Four bids were received on the October 27, 1987 opening date; two were rejected as nonresponsive because they did not include the required unit prices. AZTEK's bid, which

041689

offered its AZTEK Artist System as equal to the brand name equipment was evaluated by Air Force technical personnel. Although AZTEK stated in the literature submitted with its bid that its system complied with all the solicitation requirements, the evaluators found that the bid did not demonstrate compliance with the solicitation requirements for most of the required components. For example, the agency states that AZTEK's bid did not show that (1) its design station had the required capability to identify all artist records with at least nine alpha-numeric characters prior to storage, (2) its computer was the specified Digital Equipment Corporation (DEC) model micro computer to insure compatibility with existing equipment or that it had a dual floppy disk drive as required, (3) its keyboard had a buffer function that allows the user to continue typing while the computer is still processing a prior task, (4) its software had the capability to permit the user to create geometric shapes by the use of only two reference points and (5) its video display included an RGB color monitor with an anti-glare screen and a self converting DOT phosphor gun.

In its comments on the agency report, AZTEK first maintains that its bid was responsive because it contained a "compliance summary" sheet which listed all of the system's major components along with the bidder's conclusion that the components offered either met or exceeded the solicitation requirements. As to the specific deficiencies listed above, AZTEK states that its design station can identify the artwork as required, but it does not point out where in the descriptive literature submitted with the bid this characteristic is demonstrated. Further, while admitting that it did not offer the specified DEC micro computer, the protester contends that its substitute model will meet the agency's needs and alleges that it was advised by an agency representative that its substitute would be acceptable provided it is compatible.^{1/} Regarding the key-board buffer the protester again refers to its compliance summary, but does not point to any other portion of its literature as identifying the required feature. Finally, AZTEK does not respond to the agency's conclusions that the AZTEK bid did not show compliance with the solicitation requirements concerning the software's ability to create geometric shapes by use of only two reference points and that the video display have an RGB color monitor with a particular type screen and phosphor gun.

^{1/} The record shows that the agency subsequently concluded that the protester could not demonstrate that its substitute computer would have the required compatibility.

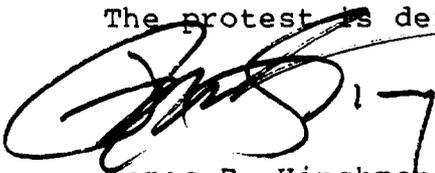
Bids offering equal products must conform to the salient characteristics of the brand name equipment listed in the solicitation in order to be regarded as responsive. Volumetrics, Inc., B-228745, Oct. 23, 1987, 87-2 CPD ¶ 391. A bidder must submit with its bid sufficient descriptive literature to permit the contracting agency to assess whether the equal product meets all the salient characteristics specified in the solicitation. If the descriptive literature or other information available to the contracting activity does not show compliance with the solicitation requirements, the bid must be rejected. Dakota Woodworks, B-220806, Oct. 29, 1985, 85-2 CPD ¶ 486. Moreover, blanket statements of compliance or the bidder's 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.

Here, AZTEK's position that its bid should have been accepted is based mainly on its "compliance summary" and statements made after bid opening. The "compliance summary" listed the components of the graphic design system and stated that the protester's proposed system either met or exceeded the salient characteristics set forth in the solicitation. This is simply nothing more than a blanket offer of compliance; that is insufficient to establish that the system offered was equivalent to the brand name system. Wayne Kerr, Inc., B-217528, supra. Further, the record shows that AZTEK failed to address in its descriptive literature several of the solicitation requirements. AZTEK's after bid opening statements concerning the features of its equipment and expressing its willingness to conduct a demonstration of its system do not overcome the protester's failure to submit with its bid sufficient information clearly showing that the equipment offered was equal to the brand name system. Yale Materials Handling Corp., B-228974.2, Dec. 3, 1987, 87-2 CPD ¶ 550. Under the sealed bidding process a bidder must demonstrate its responsiveness at the time of bid opening through the materials submitted. Moreover, to the extent AZTEK believes such a testing opportunity should have been provided under the solicitation its protest submitted after bid opening is untimely. See Tel-Med Information Systems, B-225655, June 2, 1987, 66 Comp. Gen. _____, 87-1 CPD ¶ 561.

Consequently, we have no basis upon which to object to the agency's conclusion that the protester's bid did not show that it would supply a system that would meet the solicitation's salient characteristics.

In its comments on the agency report, AZTEK alleges for the first time that the solicitation was unduly restrictive because the specifications were slanted to favor the Genographics system, required a system beyond the government's minimum needs, and arbitrarily required a DEC computer. This aspect of the protest is dismissed as untimely. Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to that time. AZTEK's allegations of unduly restrictive specifications first raised in its comments on the agency report are therefore untimely and will not be considered. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1987).

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel