



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pitts Enterprises Incorporated

File: B-232222

Date: October 12, 1988

DIGEST

Protester's bid was properly found to be nonresponsive to a brand name or equal invitation for bids where the protester's bid for an "equal" product failed to show through its descriptive literature that the offered product complied with numerous salient characteristics specified in the solicitation.

DECISION

Pitts Enterprises Incorporated protests the rejection of its bid for a lowbed semi-trailer system submitted in response to invitation for bids (IFB) No. DAHA04-88-B-0020, issued by the Department of the Army. Pitts also alleges that the solicitation favored a particular manufacturer's specifications, affording that firm a competitive advantage.

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

The IFB was issued on a brand name or equal basis for a Cozad 70 ton lowbed trailer to be used to transport the Army M1 Main Battle Tank. The IFB specified the salient characteristics of the proposed equipment, including the following: T-1 Steel Construction (ASTM-514); 25,000 lb. capacity axles, minimum; heavy duty outriggers; a 24 volt electrical system; and an intervehicular air connector (Military Standard MS 35746). Section C, paragraph 2.1, of the IFB stated that acceptance or rejection of the proposed equipment would be based upon verification of the salient features. Section L, paragraph 44(c), provided further that "the failure of descriptive literature to show that the product offered conforms to the requirements of this solicitation will require rejection of the bid."

Six bids were received on the July 18, 1988, bid opening date; Pitts was the apparent low bidder and Seibert Trailers was second low. Pitts' bid, which offered Pitts model

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70 trailer, was evaluated to determine whether its offered product complied with all the salient characteristics specified in the IFB. Although Pitts' submitted some descriptive literature for its Model 70, as well as literature for its Log and Pulpwood Trailers, various weight Tag-A-Longs, Tilt Trailers, Lowboys, a Chopper, and a Trash Trailer, the agency determined that Pitts' bid did not contain sufficient descriptive literature to demonstrate whether the "equal" product met all the salient characteristics. Accordingly, Pitts' bid was rejected as 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. Mid-Florida Corp., B-228372, Jan. 22, 1988, 88-1 CPD ¶ 60. 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. Id.

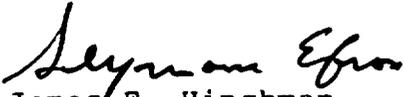
Here, as stated above, the Army found Pitts' bid to be nonresponsive because it failed to show compliance with numerous salient characteristics. Our review of the record, including Pitts' descriptive literature, confirms that Pitts' bid failed to show that T-1 Steel would be used, and that Pitts also failed to demonstrate compliance with the following required salient features: 25,000 lb. capacity axles; heavy duty outriggers; a 24 volt electrical system; and an intervehicular air connector. Rather, the literature furnished by Pitts contained merely short descriptions of various types of Pitts trailers, most of which were obviously inappropriate for this IFB. Thus, we have no basis upon which to object to the Army's conclusion that the protester's bid did not show that it would supply a product that would meet the IFB's salient characteristics.

In its comments on the agency report, the protester asserts for the first time that the Army "used a manufacturer's specifications" to establish its salient characteristics "which gave [that firm] the advantage from the beginning." Pitts argues, apparently, that the solicitation specifications were slanted to favor the brand name offeror.

This aspect of the protest is dismissed as untimely. Protests based upon alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1988). Pitts' allegations concerning the specifications contained in the

solicitation first raised in its comments are therefore untimely and will not be considered. Aztek, Inc., B-229897, Mar. 25, 1988, 88-1 CPD ¶ 308. In any event, this argument is without merit. The awardee did not offer the brand name product; rather, it offered its own brand, modified to conform to the IFB. Thus, we do not agree that the brand name manufacturer was given an unfair competitive advantage.

The protest is denied in part and dismissed in part.

for 
James F. Hinchman
General Counsel