



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Astro-Med, Inc.--Request for Reconsideration
File: B-233695.3
Date: September 21, 1989

DIGEST

Request for reconsideration of prior decision holding that procuring agency properly rejected bid as nonresponsive because bidder failed to describe proposed modifications and clearly mark its descriptive literature to show the modifications is denied where the protester essentially restates its initial arguments and does not show that the prior decision was based on an error of fact or law.

DECISION

Astro-Med, Inc., requests reconsideration of our decision Astro-Med, Inc., B-233695.2, June 12, 1989, 89-1 CPD ¶ 552, in which we denied Astro-Med's protest of the award of a contract to Western Graphtec under invitation for bids (IFB) No. DAAA07-89-C-0016, issued by the United States Army White Sands Missile Range for strip chart recorders and related materials.

We deny the request for reconsideration.

The Army rejected Astro-Med's offer of its model MT-9500-3 for this brand name or equal solicitation primarily because Astro-Med described its product as having "Minimum sample rate: 80KHz" and the Army could not determine that this met the 80KHz per channel salient characteristic requirement of the IFB. Astro-Med's bid included descriptive literature for its model MT-9500 plus added typewritten material applicable to the model MT-9500-3 being offered, which repeated the IFB's salient characteristics without providing a clear description of proposed modifications to the model MT-9500 that would have to be made to meet the IFB's salient

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characteristics. The model MT-9500 did not meet the specifications in several respects, including the 80KHz per channel minimum sample rate requirement.

The solicitation originally included as a salient characteristic "Minimum sample rate: 80KHz." The Army stated that this specification was ambiguous as evidenced by a potential bidder's request for clarification. The Army issued amendment 0001 which stated "Question: Is No. 7 the minimum sample rate listed in attachment 1, 80,000 samples per second per channel? Answer: Yes." The Army stated that the clarification was necessary because if the 80KHz sample rate were distributed over more than one channel a lower rate would result.

Astro-Med contended that by acknowledging amendment 0001 it indicated that it understood the Army's needs and confirmed Astro-Med's capability of meeting the specification. Astro-Med further contended that there was actually no change in the specification for the sample rate; it asserted that the amendment was simply a clarification for another company not well versed in the technology which was passed on by the Army for the information of all interested bidders. Astro-Med asserted that it is the technology leader in strip chart recorders and understood that the Army wanted 80KHz per channel.

In our prior decision, we held that the determination to reject Astro-Med's bid for failure to submit sufficient descriptive literature with respect to the 80KHz per channel sample rate requirement was reasonable. The agency determined that this requirement could be met by Astro-Med's "equal" product only if the model MT-9500 described in the accompanying brochure was modified. The additional descriptive literature submitted with the bid, however, merely parroted back the IFB's salient characteristics. Nowhere in its bid did Astro-Med describe any modifications. Thus, the bid failed to comply with the express requirements of the solicitation's Brand Name or Equal clause that a bidder describe any proposed modifications and clearly mark its descriptive literature to show the modifications. Interand Corp., 66 Comp. Gen. 181 (1986), 87-1 CPD ¶ 5.

In its reconsideration request, Astro-Med contends that our prior decision was in error and reiterates its position that its acknowledgment of amendment 0001 was sufficient to show its responsiveness. Astro-Med contends that nowhere in the IFB is there a requirement to have prospective bidders

indicate how they will meet each and every specification. Astro-Med contends further that a bidder must "parrot" back each and every specification to show compliance to an IFB. Astro-Med concludes that it supported its bid with descriptive literature of similar instruments in order to prove it is a manufacturer of this type of equipment.

Under our Bid Protest Regulations, a party requesting reconsideration must show that our prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1989). Repetition of arguments made during the original protest or mere disagreement with our decision does not meet this standard. Sletager, Inc.--Request for Reconsideration, B-233350.2, Apr. 18, 1989, 89-1 CPD ¶ 382.

Astro-Med's request for reconsideration merely repeats arguments made in its original protest that we considered in reaching our initial decision. As we stated in our prior decision, Astro-Med's bid failed to comply with the express requirements of the IFB's Brand Name or Equal clause that a bidder describe any proposed modifications and clearly mark its descriptive literature to show the modifications. Interand Corp., 66 Comp. Gen. 181, supra.

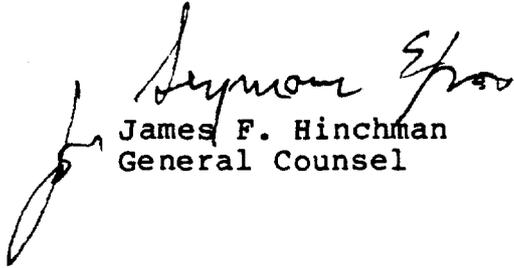
Astro-Med fails to recognize that where a bid indicates that the offered product requires modification for it to comply with the Brand Name or Equal clause's requirements, the bid must describe the proposed modifications. The fact that a bidder can show it makes similar instruments to those an IFB requires is insufficient to show the similar instrument it offers is in total compliance with the IFB. If the descriptive literature or other information reasonably available to the contracting activity does not show compliance with all salient characteristics, the bid must be rejected. Calculus, Inc., B-234074.2, June 6, 1989, 89-1 CPD ¶ 529.

With respect to Astro-Med's contention that its acknowledgment was sufficient to show its compliance with the specifications, we have held that if a bid is responsive under one interpretation of an ambiguity but nonresponsive under another, the bid is nonresponsive. Cardkey Sys., B-220668, Jan. 29, 1986, 86-1 CPD ¶ 105. Astro-Med's bid was at least ambiguous as to whether it was offering an instrument with a sample rate of 80KHz per channel or whether the sample rate of 80KHz could be distributed over

several channels because the descriptive literature for its model MT-9500 did not show compliance with the 80KHz per channel requirement. Astro-Med's mere acknowledgment of amendment 0001 simply did not clarify the basic ambiguity in its bid.

With respect to Astro-Med's allegations concerning the responsiveness of Western's bid, we note that Western was offering the brand name items called for in the IFB and did not have to furnish compliant descriptive literature.

The request for reconsideration is denied.



James F. Hinchman
General Counsel