

140183



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** BRS & Associates, Inc.

**File:** B-236883

**Date:** December 11, 1989

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### DIGEST

Bid submitted in response to a solicitation requiring a brand name or equal product properly was rejected as nonresponsive where descriptive literature submitted with bid established that offered "equal" product failed to meet three salient characteristics set forth in the solicitation.

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### DECISION

BRS & Associates, Inc., protests the rejection of its bid as nonresponsive and the proposed award of a contract to Cellular One under invitation for bids (IFB) No. F49642-89-BA042, issued by the Air Force for cellular telephones. BRS contends that the contract should be awarded to its firm based on its low responsive bid.

We deny the protest.

The IFB required Motorola model No. 8000G or equal cellular phones, and listed certain salient characteristics. The IFB advised that bids offering an equal product would be considered for award if the product fully met the salient characteristics referenced in the IFB. The solicitation also advised that since the determination of the equality of the offered product would primarily be based on information furnished by the bidder, bidders should furnish all descriptive material necessary to determine whether the product meets the salient characteristics of the IFB. The IFB incorporated Federal Acquisition Regulation (FAR) § 52.214-21, which states that descriptive literature is required to establish that an offered product meets solicitation specifications, and that the term pertains to significant elements such as (1) design; (2) materials; (3) components; (4) performance characteristics; and (5) methods of manufacture, assembly, construction, or operation.

Six bids were submitted by the August 24, 1989, bid opening date. Five bidders offered to provide Motorola model No. 8000G; two of the five also offered alternate Motorola products. BRS offered to provide an equal product, Technophone model No. PC 135A, and provided with its bid a brochure describing the product.

The Air Force rejected BRS' bid as nonresponsive because a review of the descriptive literature provided with BRS' bid indicated that the Technophone model failed to meet three salient characteristics; specifically, the offered model did not include the following required accessories: a black leather carrying case, a desk top 1-hour rapid charger, and a magnetic mount antenna.

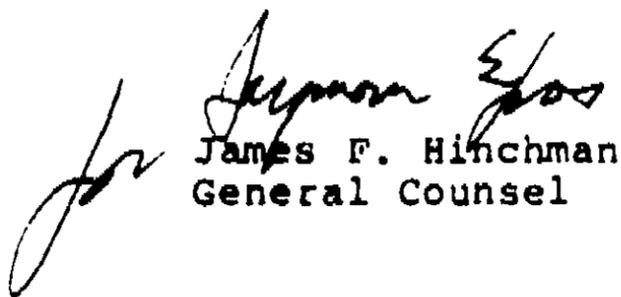
BRS contends that the Technophone model is a fully compliant alternate product which includes the leather carrying case and the antenna. BRS concedes that its descriptive literature refers to a 1-1/2 hour charger, but argues that the charging capacity of its model in effect is equivalent to the 1-hour charger called for by the IFB because both bring the battery up to 92 percent of capacity in 1 hour. Additionally, the protester maintains that it was not required by the IFB to provide descriptive literature for the above three salient characteristics because under the IFB provision, FAR § 52.214-21, the requirement for descriptive literature does not apply to accessories such as the carrying case, antenna and rapid charger. Further, the protester contends that since its bid's cover letter stated that the Technophone model meets or exceeds all specification requirements, all of the required items are included in its bid and will be provided with its product.

To be responsive to a brand name or equal solicitation, bids offering equal products must conform to the salient characteristics of the brand name equipment listed in the solicitation. Tri Tool, Inc., B-233153, Jan. 25, 1989, 89-1 CPD ¶ 84. A bidder must submit with its bid sufficient descriptive literature to establish that its offered equal product is either identical or equal to the brand name product. Astro-Med, Inc., B-233695.2, June 12, 1989, 89-1 CPD ¶ 552. If the solicitation or other information available to the contracting activity does not show compliance with the solicitation requirements, the bid must be rejected. HEDCO, Hughes Electronic Devices Corp., B-221332, Apr. 7, 1986, 86-1 CPD ¶ 339. Moreover, blanket statements of compliance or the bidder's belief that its product is functionally equal to the brand name product are not enough; rather, the protester must affirmatively demonstrate the equivalency. AZTEK, Inc., B-229897, Mar. 25, 1988, 88-1 CPD ¶ 308.

Here, the solicitation clearly required that the offered cellular phone include a carrying case, 1-hour rapid charger and a magnetic mount antenna. A review of the record shows that the brochure that was included in BRS' bid does not indicate that a black leather carrying case would be provided with the telephone. Additionally, although the brochure states in three places that the rapid charger recharges batteries in approximately 1-1/2 hours, there is no statement in the literature supporting the protester's contention that the 1-1/2 hour charger is the equivalent of the 1-hour charger. Further, although the brochure mentions a "flexible, high gain antenna for optimum performance," there is no affirmative demonstration in the brochure that this antenna is the same as the required magnetic mount antenna, for which the IFB specified that no substitutes may be provided.

BRS' position that its bid is responsive is based primarily on its cover letter statement that the Technophone model meets or exceeds all solicitation specifications, and its contention that under FAR § 52.214-21, descriptive literature is not required for accessories. The protester's position lacks merit. Blanket statements of compliance are insufficient to affirmatively establish the equivalency of a product. Id. Additionally, contrary to BRS' assertion, the requirement for descriptive literature applies to all salient characteristics. Since the IFB listed the three accessories as salient characteristics, BRS was required to submit descriptive literature showing that its offered product included the three accessories. Accordingly, since BRS' descriptive literature failed to show that its offered product met all of the salient characteristics in the IFB, the Air Force properly rejected BRS' bid as nonresponsive.

The protest is denied.

  
James F. Hinchman  
General Counsel