

Kupper



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gasser Chair Company, Inc.
File: B-236189.2
Date: January 8, 1990

DIGEST

In "brand name or equal" procurement, agency properly determined that awardee's offered "equal" item was acceptable based on descriptive literature in bid, even though taken largely from brand name manufacturer's commercial literature, since it indicated awardee's intent to furnish items meeting the specified salient characteristics in the same manner as the brand name item.

DECISION

Gasser Chair Company, Inc., protests the award of items 0001, 0002, 0006 and 0007 to Worldwide Furniture and Trading Company, Inc., under request for proposals (RFP) No. N00228-89-R-2126, issued by the Naval Supply Center for various items of furniture. We deny the protest.

The RFP included seven line items requesting "Gasser model or equal" for various items of furniture. Each line item contained the salient characteristics of the Gasser brand name item that were considered essential requirements. The "Brand name or Equal" clause in the RFP provided that if an "equal" product is offered, the offeror must furnish as a part of its proposal all descriptive material needed for the purchasing activity to determine whether the product offered meets the specified salient characteristics. Two proposals were received; Worldwide's was low at \$83,761, and Gasser's second low at \$90,710.80. The requiring activity evaluated Worldwide's proposal, with descriptive literature, and after determining that its offered items were equal to Gasser's, awarded the contract to Worldwide.

Gasser contends that the descriptive literature Worldwide submitted was inadequate to establish the equality of its items to the Gasser brand name items. Specifically, Gasser complains that, although Worldwide's bid specified manufacturers other than Gasser, the literature accompanying the

bid consisted largely of full pages copied or taken from Gasser's catalog (with the brand name references generally deleted), and did not include descriptive specifications from the specified manufacturers, or photographs of the manufacturers' own products. Gasser concludes that Worldwide's bid should be rejected since Worldwide's bid literature misled the agency into believing that it will furnish items identical to the Gasser brand name items. We do not agree.

In a brand name or equal procurement, the procuring agency is responsible for evaluating the required descriptive literature submitted by offerors of equal items and ascertaining if it provides sufficient information to determine whether the offered items are in fact equal to the brand name products. Physio Control Corp., B-224491, Oct. 17, 1986, 86-2 CPD ¶ 467. Because the adequacy of the descriptive material and the quality of the product it describes are technical judgements within the ambit of the contracting agency, we will not disturb agency determinations in this regard unless shown to be unreasonable, which the protester must affirmatively prove. See Micro Lamps, Inc., B-229737, Mar. 18, 1988, 88-1 CPD ¶ 288.

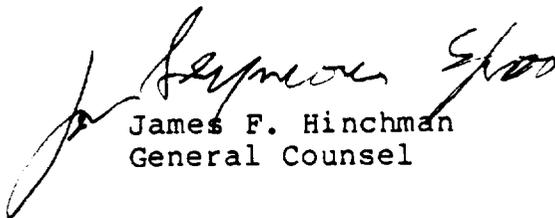
We find the agency's determination reasonable here. The IFB did not require that the descriptive literature furnished be in any particular form or format, or include any specific information; rather, bidders were simply to furnish information showing that the equal items being offered would satisfy the salient characteristics listed for each item on the bid schedule. Worldwide's literature satisfied this requirement. For instance, line item 0001 listed the salient characteristics as "PTE Table Top, Sand Protective Edge, W/Spice Accent Stripe, Laminated Wilsonart, Victorian Marble Gasser Chair Co. model #1733-11 or equal, size 42" X 42", color Almond." Worldwide's descriptive literature included a picture of a laminated tabletop with a protective edge, and a dimensional drawing showing a 42" by 42" tabletop and describing other dimensions and features (e.g., "All corners feature 2 1/2" radius).^{1/} This information, and the similar information furnished for the other challenged items, shows that what Worldwide is offering to furnish satisfies the specified salient characteristics, and thus reasonably was viewed by the

^{1/} Worldwide subsequently also furnished a sample of Wilsonart laminate and a sample of the rust colored protective edge material, although the agency apparently did not require these samples.

agency as adequately establishing the equivalence of the firm's offered equal items.

The fact that Worldwide's literature may have been copied in whole or part from Gasser's brand name literature did not preclude consideration of the bid, see Applied Electro Mechanics, Inc., B-214673, Sept. 10, 1984, 84-2 CPD ¶ 271; the relevant consideration is that the bid and literature clearly indicated that the items Worldwide was agreeing to furnish satisfied the specified salient characteristics. Id. Whether Worldwide is able to perform in accordance with its bid is a matter of the firm's responsibility; we will not question an agency's affirmative determination of a firm's responsibility absent a showing of fraud on the part of contracting officials, or that definitive responsibility criteria in the solicitation have not been applied. DEST Corp., B-221869, Apr. 7, 1986, 86-1 CPD ¶ 344. Neither exception applies here.

The protest is denied.



James F. Hinchman
General Counsel