

Ayer



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Superior Healthcare Group
File: B-239238
Date: August 6, 1990

Paul Tourtellot, for the protester.
Richard P. Welch, for Welcon, Inc., an interested party.
E. L. Harper, Office of Acquisition and Materiel Management,
Department of Veterans Affairs, for the agency.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency properly rejected low bid as nonresponsive where
rejected bidder's bid sample syringes failed to conform to
characteristics listed in invitation for bids, which warned
bidders that submission of nonconforming bid samples with
their bids would result in rejection.

DECISION

Superior Healthcare Group protests the Department of
Veterans Affairs' (VA) rejection of its low bid for three
line items of Type I bulb irrigating syringes under
invitation for bids (IFB) No. M1-69-90 to be delivered to VA
Supply depots in California, Illinois, and New Jersey. The
VA rejected Superior's bid as nonresponsive because it found
Superior's bid samples unacceptable.

We deny the protest.

The IFB required the submission, with bids, of samples
conforming to the solicitation's listed characteristics and
warned bidders that submission of nonconforming samples

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would result in rejection of their bids. The IFB's commercial item description (CID) listed the following characteristics:

"Syringe, Irrigating, plastic, shall be two piece, disposable, sterile, . . . individually packaged, with catheter tip and tip protector. The tip protector must be placed on catheter tip in such a manner that it must remain on the tip until removed manually. The tip protector must also serve as a means of containing the liquid contents in the syringe."

The VA's evaluation of Superior's bid sample disclosed that:

"[T]he tip protector was not placed on the catheter tip when received, also, liquid leaks from the tip when the syringe is held in a horizontal position tip down."

Superior contends that its Type I syringe meets the CID requirements, and does not leak. Superior argues that the CID does not clearly require the placement of the tip protector on the syringe tip. In this regard, Superior argues that the use of the word "catheter" in the phrase "catheter tip" creates an ambiguity which renders the tip protector requirement unenforceable so far as the "syringe" tip on its sample is concerned. Superior also disputes whether its syringe leaked; it speculates that its samples might have been damaged or the test not properly conducted.

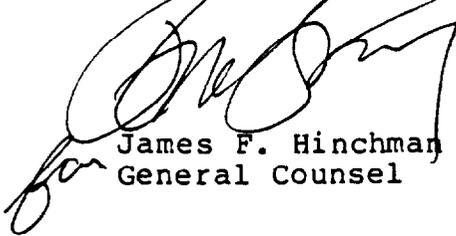
The VA claims that the CID was not ambiguous and that the samples submitted by Superior both leaked and did not have tip protectors on the syringes. The VA reports that it used the term catheter tip "because this syringe irrigating tip is placed into a catheter to irrigate the bladder (therefore, the reason for the term 'catheter tip')."

The record shows that Superior submitted bid samples with uncovered tips on the syringes. Given the VA's explanation of the term "catheter tip," and since a syringe has only one tip, we think a reasonable reading of the CID required the items to be packaged with tip protectors on the catheter tips (the tips of the syringes). In any case, since the alleged ambiguity in the CID was apparent on the face of the solicitation, Superior was required to resolve this matter prior to bid opening rather than making its own assumptions

about its meaning.^{1/} See Ward Constr. Co., B-240064, July 30, 1990, 90-2 CPD ¶ _____. Thus, Superior's bid was properly rejected because its bid sample did not conform to the listed CID requirement.^{2/}

In view of the foregoing, we need not decide whether the bid sample also failed to conform because of leakage.

The protest is denied.



James F. Hinchman
General Counsel

^{1/} Superior reports that it enclosed as part of its bid Comments regarding the tip connector assembly. Even if we assume that Superior's comments were an attempt to file an agency-level protest of the alleged defect, the protest is untimely. A protest filed with a bid cannot properly be considered as filed before opening since the contracting officer is not generally authorized to open the bid until the time set for bid opening. Americover Co., B-234352, Mar. 28, 1989, 89-1 CPD ¶ 320.

^{2/} The awardee explains, and the VA agrees, that the tip protector requirement insures the syringe tip remains sterile and uncontaminated by airborne bacteria after the package is opened and before the syringe can be used on the patient. The same level of protection is not afforded by merely providing the tip protector in the package, rather than in place on the syringe tip. The awardee points out that the requirement increases manufacturing costs by (1) increasing labor cost--to assemble the tip protector on the syringe tip--and (2) slowing down packaging speeds--increasing production time.