



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: JoaQuin Mfg. Corp.

File: B-240777

Date: December 18, 1990

D. Bargas for the protester.

Jeffrey I. Kessler, Esq., and James G. Gilliam, Esq., Department of the Army, for the agency.

Anne B. Perry, Esq., and John F. Mitchell, Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's bid was properly rejected as nonresponsive where information supplied with protester's bid under a brand name or equal solicitation demonstrated that offered product failed to meet a material requirement of the solicitation.

DECISION

JoaQuin Mfg. Corp. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAA05-90-B-0001, issued by the Rocky Mountain Arsenal, Commerce City, Colorado, for the supply and installation of two prefabricated portable steel buildings for the storage of toxic and hazardous substances. The protester challenges the rejection of its bid on the grounds that, according to its own calculations, its product meets the specifications as provided in the solicitation.

We deny the protest.

The IFB, issued April 26, 1990, contained brand-name-or-equal type specifications which identified a Safety Storage Inc. product as the brand name item. As a result of a potential bidder's inquiry, the IFB was amended to list as one of the salient characteristics of the brand name item the performance requirement that the structure maintain an interior ambient temperature range between 65 and 80 degrees Fahrenheit. The record shows that the brand name manufacturer achieves this performance through the use of mechanical refrigeration units, although the IFB did not explicitly require bidders to use this design approach.

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The lowest of the four bids received was rejected as nonresponsive because the bidder took exception to the delivery and f.o.b. point requirements of the solicitation. The bid of the protester, which is located in the same city as the Arsenal, was second low and Safety Storage's bid was third low.

JoaQuin offered a storage building which utilizes an electrically powered fan for ventilation and cooling. The Arsenal's technical evaluation personnel questioned whether fan ventilation alone would always maintain an inside ambient temperature range below 80 degrees Fahrenheit, as required by the IFB. As a result, the contracting officer requested that JoaQuin provide an explanation of why it believed that its proposed fan ventilation alone would satisfy this requirement, if refrigerated air conditioning was not provided.^{1/}

In response, JoaQuin confirmed that its design did not include refrigerated air conditioning, which it pointed out was not specifically called out in the specifications. JoaQuin stated that its design, in which a single electrical fan in the center unit of the storage building would also draw air through the two end compartments, ought to maintain an inside ambient temperature between 10 to 15 degrees below the outside ambient temperature. The technical evaluators determined that this information did not change their prior conclusion that the fan ventilation system alone would not satisfy the IFB requirement that the interior ambient temperature of the storage area be maintained below 80 degrees Fahrenheit, since local temperatures existing at the Rocky Mountain Arsenal at times exceed 100 degrees Fahrenheit during several months of the year. Consequently, the contracting officer determined that JoaQuin's bid was nonresponsive. The contract was awarded to Safety Storage, the third low bidder.

JoaQuin then filed a protest in our Office, challenging the award of the contract on the basis that JoaQuin's bid was improperly rejected as nonresponsive. The protester argues that it is improper for the contracting officer to reject JoaQuin's bid for failing to provide refrigerated air conditioning where the IFB did not include such a requirement.

^{1/} Here, it appears the agency evaluators already had concluded that the design on which JoaQuin's bid was based would not meet the IFB's requirements, before it inquired of JoaQuin on what it based its contrary conclusion, and the protester did not modify its approach as a result. Nevertheless, we think agencies should avoid post-bid opening inquiries of bidders for supporting data which may affect bid responsiveness, which is to be determined based on the contents of the bid as of opening. Data Express, B-234685, July 11, 1989, 89-2 CPD ¶ 28.

in its list of salient characteristics and where the agency did not provide in the IFB information as to the outside ambient temperature range which could be expected. In this regard, the protester advised the agency in response to its post-bid opening inquiry that JoaQuin's approach was supported by a handbook published by a major air conditioning equipment manufacturer, which suggests as a design criterion a maximum ambient air temperature of 95 degrees Fahrenheit for the Denver area. Assuming JoaQuin's approach could maintain temperatures within the building 15 degrees below an outside ambient temperature of 95 degrees, JoaQuin's product would comply with the specifications. The protester argues that since the IFB did not require the use of refrigerated air conditioning, nor provide bidders with estimates of expected outside ambient temperature ranges which would indicate the need for a refrigerated air conditioning system, JoaQuin was justified in proposing a fan-powered ventilation system which an industry publication indicates would sufficiently cool the storage unit, and the agency could not require a bidder to offer something more.^{2/}

To be responsive to a brand name or equal solicitation, a bid offering an equal product must contain sufficient descriptive literature to permit the contracting officer to assess whether the offered product possesses the salient characteristics specified in the solicitation. Photographic Analysis Co., Inc., B-223787, Dec. 1, 1986, 86-2 CPD ¶ 619. When a specified salient characteristic is a precise performance feature, such as the maintenance of a specific interior ambient temperature range, an offered equal product must meet that precise requirement. Motorola Inc.; General Elec. Co., B-221391.2 et al., May 20, 1986, 86-1 CPD ¶ 471.

Here, while the IFB did not list the provision of "mechanical refrigeration" or "air conditioning" as a requirement, it did require that the interior ambient temperature of buildings erected at a location which experiences temperatures in excess of 100 degrees Fahrenheit must not exceed 80 degrees, a requirement not met by JoaQuin's product without some form of cooling besides a fan. Even the protester acknowledges that

^{2/} JoaQuin argues that the absence in this IFB of an estimate of the expected outside ambient air temperature range was especially important because in its experience portable steel buildings may be delivered to one military installation only to be used at another location with entirely different climatological conditions. We are not persuaded by this argument because this IFB specifically provides that the contract includes the erection of the buildings "on-site, near Building 741" at the Arsenal, which is located in the city where the protester is located.

its product was "marginal on cooling" using the most optimistic assumptions that its approach could achieve 15 degrees of cooling with an outside ambient temperature which would not exceed 95 degrees Fahrenheit. JoaQuin's storage buildings would not comply with the interior temperature requirements if the outside ambient temperature rose above 95 degrees, a condition which occurs in the area where the product is to be used. Therefore, the agency did not unreasonably reject JoaQuin's bid as nonresponsive for failing to offer an equal product.

The protest is denied.



James F. Hinchman
General Counsel