



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Wright Tool Company
File: B-242800; B-242800.3
Date: May 30, 1991

Wayne W. Wright for the protester.
Christy L. Gherlein, Esq., General Services Administration,
for the agency.
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Where brand name or equal solicitation requires submission of descriptive literature sufficient to establish that the offered item conforms to the salient characteristics and advises bidders that failure to submit adequate descriptive literature would require rejection of their bids, the procuring agency properly rejected as nonresponsive a bid that included descriptive literature which failed to show compliance with all of the listed salient characteristics.

DECISION

Wright Tool Company (WTC) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 6FEC-K5-90JX81-S, issued by the General Services Administration (GSA) for refrigeration unit service kits. GSA rejected WTC's bid because the descriptive literature which WTC submitted with its bid did not adequately demonstrate compliance with two of the salient characteristics listed in the IFB. WTC maintains that its descriptive literature adequately indicated that its offered product was equal, and that to the extent that it did not, the agency was required to request additional information from WTC since it was the apparent low bidder.

We deny the protest in part and dismiss it in part.

The IFB required that bidders offering an equal product to the brand name listed in the solicitation submit with their bids descriptive literature to demonstrate compliance with the listed salient characteristics. The solicitation cautioned bidders that failure to submit adequate descriptive literature

would require rejection of the bid as nonresponsive. The IFB product description and salient characteristics list was as follows:

"MANIFOLD, CHARGING AND TESTING, REFRIGERANT:
FOUR VALVES, FOUR END CONNECTION; HANDWHEEL
VALVE HANDLE; MATERIAL: STEEL; FURNISHED WITH
PLASTIC CARRYING CASE, DRAF INDUSTRIES, PART
NUMBER 1305 OR EQUAL." (Emphasis added.)

Three bids were received in response to the solicitation. Because WTC was the apparent low bidder, its "equal" product was evaluated to determine compliance with the IFB requirements. WTC offered a Uniweld product No. Q4N5M, and as descriptive literature it submitted a one-page photocopy of a facsimile of a Uniweld catalog page on which the part number it was offering appeared. GSA's technical personnel reviewed the literature and determined that the offered "equal" item did not meet the purchase description. Specifically, the agency found that there was no plastic carrying case, and no mention of the manifold body material. The contract specialist requested the technical personnel to check if they had a Uniweld catalog which might answer their concerns, but they did not, and a written determination was executed rejecting WTC's bid as nonresponsive.

WTC objects to the rejection of its bid as nonresponsive arguing that the product it offered includes a plastic carrying case which is pictorially depicted on the top of the catalog page submitted. The protester concedes that the integrity of the picture is not clear. In fact, the picture is just a black rectangle on the top of the page from which it is not possible to tell what exactly is depicted much less that a plastic carrying case is included with the kit. WTC also argues that the agency should have contacted WTC after reviewing its bid to request additional information since it was the apparent low bidder.

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. A bidder must submit with its bid sufficient descriptive literature to permit the contracting agency to assess whether the equal product meets all the salient characteristics. CNC Co., B-239328, July 20, 1990, 90-2 CPD ¶ 86. Where descriptive literature is required to establish the bid's conformance with the specifications, and bidders are so cautioned, the bid must be rejected as nonresponsive if the literature submitted fails to show clearly that the offered product conforms to the specifications. JoaQuin Mfg. Corp., B-228515, Jan. 11, 1988, 88-1 CPD ¶ 15.

WTC's bid and literature clearly did not demonstrate that the offered equal item met all salient characteristics specified in the IFB. The body material was not addressed at all in the descriptive literature submitted, and WTC has never stated that the body is composed of steel as is required by the IFB. Further, the dark rectangle on the top of the catalog page does not indicate that a plastic carrying case is included, nor is there any mention of such a carrying case in WTC's kit description.

Contrary to WTC's view that the agency should have requested additional information from WTC prior to awarding the contract to another bidder, the agency did not have the option to pursue this alternative. Where, as here, the acceptability of an equal item is to be determined based on a comprehensive descriptive literature requirement, the determination must be based on the descriptive literature submitted with the bid; if the materials do not show conformance with specified salient features, the bid must be rejected as nonresponsive. Joaquin Mfg. Corp., B-228515, supra. The IFB specifically warned that bid rejection would be the consequence of failing to submit adequate literature with its bid and, thus, WTC's bid was properly rejected as nonresponsive.

WTC also challenges the award of the contract to the low, responsive bidder, arguing that the bid submitted by the awardee, Sigma West Corporation, is nonresponsive since the brand name product specified is unavailable and the brand name manufacturer is out of business. We dismiss this ground of protest because WTC, as a nonresponsive bidder, is not an interested party to challenge the acceptability of Sigma's bid, since WTC would not be in line for award even if its protest were sustained. 4 C.F.R. § 21.0(a) (1991).

The protest is denied in part and dismissed in part.


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General Counsel