



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Microscope Company, Inc.

File: B-243229

Date: July 5, 1991

Janis H. Nazarian for the protester
Charles J. McManus, Esq., Eric A. Lile, Esq., and Donald J. Sherfick, Esq., for the agency.
James M. Cunningham, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency improperly rejected protester's proposed "equal" products in a brand name or equal procurement is denied where protester concedes that the information it submitted does not establish that its proposed "equal" products meet all the required salient characteristics of the specified brand name product.

DECISION

The Microscope Company, Inc. protests the rejection of its offer under request for proposals (RFP) No. N00163-90-R-0218, issued by the Naval Avionics Center, Indianapolis, Indiana, for a metallograph, Leco Corp. Model PMG-3 or equal, including several accessory items, and related training, maintenance manuals, and installation. Microscope contends that its proposed "equal" satisfied the required salient characteristics, and therefore it should have received award as the low-priced, technically acceptable offeror.

We deny the protest.

The RFP specified the salient characteristics of the brand name product and provided that these characteristics were "essential" to the Navy's needs and would be used by the Navy to evaluate whether "equal" products were technically acceptable. The RFP further provided that the Navy would award a contract to the "responsible offeror whose offer conforming to the RFP will be most advantageous to the government, cost or price and other factors, specified elsewhere in this solicitation, considered."

Three offerors, including Microscope and Leco Corporation, submitted offers by the initial closing date of February 27, 1990. Microscope submitted two alternate initial proposals offering "equal" products but did not submit any descriptive material concerning the products. Microscope also did not submit any descriptive material with its April 26 best and final offers (BAFOs). After reviewing Microscope's BAFOs the Navy concluded that, in the absence of descriptive material, it was impossible to determine whether Microscope's offers met several of the salient characteristics. Consequently, the Navy found Microscope's offer unacceptable and made award to Leco, the only offeror which submitted an offer meeting all the salient characteristics.

After Microscope filed its protest, in an effort to resolve the matter, the agency gave Microscope a copy of its evaluation of the protester's proposals. Microscope then submitted descriptive material to the Navy concerning its proposed products; however, the Navy did not thereafter change its overall judgment about these products. Specifically, the Navy determined that it was still impossible to ascertain whether Microscope's offer met several of the referenced salient characteristics. Microscope concedes that the information submitted with its proposals did not demonstrate compliance with any of the salient characteristics, but argues that "[w]e do hope that our word as a responsible vendor of integrity can be accepted in lieu of a piece of literature."

Generally, when a brand name or equal purchase description is used, it is incumbent upon an offeror proposing to furnish an equal product to establish that its product will meet the specified salient characteristics of the brand name product. CryoMed, B-241605, Feb. 22, 1991, 91-1 CPD ¶ 202; The E. A. Kinsey Co., B-211832, July 11, 1983, 83-2 CPD ¶ 75. In ascertaining if an offeror provides sufficient information with its offer to determine the acceptability of the offeror's product as equal, the agency enjoys a degree of discretion which we will not disturb absent a showing that the determination is unreasonable. See Philips Medical Sys. N. Am. Co., B-237598.2; B-237599.2, Apr. 17, 1990, 90-1 CPD ¶ 395.

We find the rejection of Microscope's offer to be legally unobjectionable. Not only did the protester fail to establish in its proposals that its proposed products met all of the salient characteristics, but the protester admits that even the descriptive material which it ultimately submitted to the Navy after the award does not show compliance with several of the RFP's salient characteristics. For example, the company concedes that its post-award descriptive material submitted to the Navy "did not make clear" that the fine focus control of its products is graduated in one micron increment as required by salient characteristic No. 9 of the RFP.

Microscope's argument that its "word as a responsible vendor of integrity [should] be accepted in lieu of a piece of literature" is not legally significant since an offeror is required to demonstrate compliance with the salient characteristics in its proposal, not merely by a blanket assurance. See Trail Equip. Co., B-241004.2, Feb. 1, 1991, 91-1 CPD ¶ 102. Since Microscope's proposal, even as changed by the company's post-award submission of descriptive information, does not establish that its proposed products will meet all the specified salient characteristics of the RFP, the agency properly rejected the proposal.

The protest is denied.


for James F. Hinchman
General Counsel