

Jordan
148575



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

Decision

Matter of: Adrian Supply Co.

File: B-250767

Date: February 12, 1993

Bob Stormberg for the protester.
Vincent A. Salgado, Department of Transportation, for the agency.
Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under brand name or equal solicitation, bid of an "equal" product was nonresponsive and should have been rejected by the contracting agency where the bid failed to identify and offer all optional accessories necessary to meet the specifications of the solicitation.

DECISION

Adrian Supply Co., protests the award of a contract to White Plains Electrical Supply Co., Inc., under invitation for bids (IFB) No. DTFA06-92-B-50103. The IFB, issued by the Federal Aviation Administration (FAA), Department of Transportation, was for an automatic transfer switch/bypass isolation switch (ATS/BIS). Adrian contends that White Plains's bid was nonresponsive because it did not include sufficient descriptive literature or otherwise identify and offer all accessories required by the specifications.

We sustain the protest.

The ATS/BIS is for use in conjunction with a separately acquired Kohler 1000KW standby power generator to be installed in the FAA's new regional office facility in College Park, Georgia. In order to ensure compatibility with the generator, the IFB specified a particular Kohler model number or "approved equal" in accordance with the Description/Specifications. The IFB provided seven pages of specifications detailing the required features of the ATS/BIS, including a number of mandatory accessories.

The IFB advised bidders that to be considered for award, a bid for an "equal" product must clearly identify the product offered and the government must find that it fully meets the requirements listed in the IFB. Evaluation of bids and the determination of equality was to be based on information furnished by the bidder or identified in its bid, as well as other information reasonably available to the contracting office. The IFB also advised that bidders proposing modifications to make an offered product conform to the specified requirements must include a clear description of the proposed modification, and clearly mark any descriptive literature to show the modification.

Seven bids were submitted by the September 18, 1992, bid opening date. White Plains was the apparent low bidder at \$54,468 and Adrian was second low at \$54,728. In its bid, White Plains identified its switch as a "Zenith Per Spec. No. ZBTSH200EC-7A (10) EKLLMMPSTUW, ATS/BIS."¹ The bid also referred the agency to an attached list of accessories and advised that drawings were available 1-2 weeks after receipt of the order. Other than the list of accessories, White Plains's bid did not include any descriptive literature. Adrian's bid offered a Zenith Controls Model ZBTSH200EC-5 with accessories/options. Adrian attached Zenith descriptive literature which Adrian had annotated to identify the stated requirements, including the optional accessories Adrian would provide and a proposed modification.

After bid opening, at the FAA's request, White Plains had Zenith provide copies of the drawings referenced in its bid. The FAA determined that the drawings "were generic" and did not consider them in the evaluation of equality. The FAA concluded that the switch bid by White Plains was an acceptable equal product, based on its review of the White Plains bid, accessories list, and information in catalogs in the FAA office.

The FAA awarded the contract to White Plains on September 25. Adrian filed an agency-level protest against the acceptance of White Plains's bid, and subsequently, filed this protest with our Office. Performance of the contract has been stayed pending the resolution of this protest.

¹The string of capital letters following the basic model number denotes optional accessories. White Plains's accessory list provided additional and more detailed references to the accessories to be supplied.

Among other issues, Adrian contends that White Plains's bid was nonresponsive because it failed to address or include information on four specifications concerning the following accessories: pilot lights; running time meter; under frequency protection; and "push to test lamp switch." The FAA maintains that White Plains's bid either contained information, or identified readily available descriptive materials, sufficient to establish that the product offered meets all specifications including all accessories. We find the White Plains bid clearly failed to offer one, and apparently failed to offer another of the identified accessories required by the specifications.²

Paragraph 6.9d requires "under frequency protection for the normal source, adjustable from 45 - 60 HZ." According to Adrian, this is not a standard feature of the Zenith switch offered by it and White Plains and there is no optional accessory code to identify this feature. Thus, the only way to indicate its provision is to so state in the bid. Adrian annotated its descriptive literature to identify this modification; White Plains's bid does not include any reference to this feature.

Paragraph 6.8 of the specifications requires four pilot lights to indicate switch position and source availability. According to the Zenith descriptive literature furnished by Adrian, four pilot light accessories are available: L1, indicating emergency position; L2, indicating normal position; L3, indicating normal source availability; and L4, indicating emergency source availability. White Plains's bid lists "LL" in the part number it bid, and lists as accessories only "L1PB" ("emergency position") and "L2PB" ("normal position"). White Plains's bid is silent with regard to the two source availability pilot lights; Adrian's descriptive literature is plainly marked to indicate that it will provide all four required pilot lights.

From our review of the record, including the IFB, both bids, and the included descriptive literature, we find that White Plains's bid clearly was not responsive to the under frequency protection requirement and there is some question whether it was responsive to the pilot light requirement. To be responsive, a bid must provide an unequivocal offer to perform the exact thing called for in the solicitation such that acceptance of the bid will bind the contractor in accordance with the material terms and conditions of the solicitation. Hagglunds Prinoth, B-238244, Apr. 12, 1990, 90-1 CPD ¶ 385. Where the solicitation requires it, a

²Two of these accessories, concerning the running time meter and the lamp switch, are apparently encompassed by references to different accessories on White Plains's list.

bidder must include sufficient descriptive literature with its bid to demonstrate the offered product's compliance with all specified requirements. Joaquin Mfg. Corp., B-240777, Dec. 18, 1990, 90-2 CPD ¶ 498. Where a bidder provides information with its bid that reduces, limits, or modifies a solicitation requirement, or otherwise does not show compliance with all requirements, the bid must be rejected as nonresponsive. See Oscar Vision Sys., Inc., B-232289, Nov. 7, 1988, 88-2 CPD ¶ 450.

The IFB required bidders to provide or identify reasonably available information sufficient to establish that the offered product complied with the requirements of the specifications. White Plains's bid, including its list of optional accessories, makes no reference to the required under frequency protection accessory. Further, the FAA has not challenged Adrian's statement that this accessory is neither standard to, nor an optional feature of, the Zenith product offered by White Plains. Thus, neither White Plains's bid nor any available descriptive literature established the awardee's intent to furnish this accessory. Haaglund's Prinoth, supra. White Plains's bid therefore is nonresponsive to this material requirement.

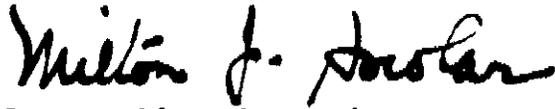
With regard to the pilot lights, White Plains's bid accessory list contains the emergency and normal position pilot lights ("L1PB" and "L2PB"), but did not reference the two source availability pilot lights. Without more, White Plains's bid apparently fails to provide the information required by the terms of the IFB to establish that it intended to furnish all four lights. The FAA states its "satisfaction" with White Plains's compliance, based upon its review of descriptive literature. From our review of the descriptive literature, there is some question whether the lights are a standard feature or options which must be identified. Thus, while the descriptive literature clearly establishes the "availability" of the four lights, it does not establish that the awardee bound itself to furnish them. White Plains did not unequivocally agree to furnish the four pilot lights, and by only mentioning two of the lights, effectively took exception to the other two. See Haaglund's Prinoth, supra; Oscar Vision Sys., Inc., supra.

We are not persuaded that White Plains's reference to a Zenith "per spec" is sufficient to make up for these shortcomings. The IFB clearly required submission or identification of sufficient information to establish that an offered "equal" product complied with the specifications. Blanket statements of compliance are insufficient to establish that a product is equal to that specified; rather the bidder must affirmatively demonstrate that equivalency. AZTEK, Inc., B-229897, Mar. 25, 1988, 88-1 CPD ¶ 308. Because White Plains's bid is silent with regard to the

frequency protection modification, and unclear about two of the required pilot lights, it fails to make the requisite affirmative demonstration. Thus, the FAA should have rejected White Plains's bid as nonresponsive.

Since it appears that Adrian's bid, offering the same model Zenith switch, addresses and meets all the specifications required by the FAA, we recommend that the FAA terminate its contract with White Plains, and award a contract to Adrian, if otherwise appropriate. Further, Adrian is entitled to recover its reasonable costs of filing and pursuing its protest. 4 C.F.R. § 21.6(d)(1) (1992). Adrian should submit its certified claim for its protest costs directly to the FAA within 60 working days of receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

for 
Comptroller General
of the United States