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Comptroller General
of the United States

Washington, D.C. 20548

417287

Decision

Matter of: Discount Machinery & Equipment, Inc.

File: B-252889

Date: July 27, 1993

Mike Ray for the protester.

Laurie D. Whelan, Department of the Air Force, for the agency.

Matt Kelly for Better Engineering Mfg., Inc., an interested party.

James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid of "equal" items on brand name or equal invitation for bids is nonresponsive where the bid failed to include sufficient descriptive literature to demonstrate the "equal" items' compliance with the salient characteristics listed in the solicitation.

DECISION

Discount Machinery & Equipment, Inc. protests the rejection of its bid as nonresponsive and the award of a contract to Better Engineering Mfg., Inc., to supply jet aircraft washer/degreaser machines and related equipment under invitation for bids (IFB) No. F45613-92-B0049, issued on a brand name or equal basis by the Department of the Air Force, Fairchild Air Force Base, Washington.

We deny the protest.

The IFB solicited bids for five jet washer/degreaser machines and related equipment manufactured by Better Engineering or equal, as described in 11 items listed in the bid schedule. For each item, various salient characteristics were listed. The IFB included the "Brand Name or Equal" clause, Defense Federal Acquisition Regulation Supplement § 252.210-7000, which requires that a bidder offering an "equal" product must (1) meet the salient characteristics specified in the solicitation; (2) identify the brand name and make or model number of the "equal" product; (3) submit descriptive literature, such as cuts, illustrations, drawings or a clear reference to previously furnished

descriptive data available to the contracting officer; and (4) clearly describe any planned modification to the product to conform to the salient characteristics by clearly marking up the descriptive material to reflect the change(s). Under the clause, the contracting officer is required to evaluate "equal" products based on the information contained in the bid to determine whether the product is equal to the brand name product and is not required to seek additional information in making this evaluation. A single award of all items in the aggregate was contemplated by the IFB.

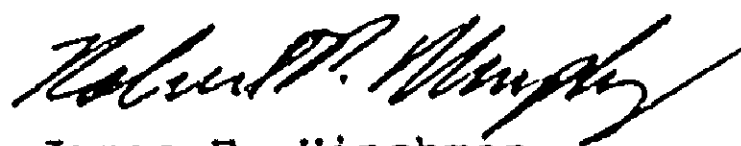
The IFB in question here was issued on November 6, 1992, with bids due on December 8, 1992. Discount Machinery submitted the low bid and offered items manufactured by Triangle Engineering, Inc., which were claimed to meet all required salient characteristics. Upon review, the agency determined that the descriptive literature in Discount Machinery's bid failed to establish that its offered items met the salient characteristics of the brand name items listed in the IFB. Discount Machinery's bid was therefore rejected as nonresponsive. The protester claims that its bid offered custom manufactured items to meet the required specifications exactly, and that the agency was aware of this fact.

To be responsive to a brand name or equal IFB, 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 specified in the IFB. Tri Tool, Inc., B-233153, Jan. 25, 1989, 89-1 CPD ¶ 84. When the descriptive literature submitted with the bid fails to establish that the products would meet all of the listed solicitation requirements, the bid must be rejected as nonresponsive. AZTEK, Inc., B-229897, Mar. 25, 1988, 88-1 CPD ¶ 308.

The Triangle Engineering literature submitted with Discount Machinery's bid failed, in numerous respects, to show compliance with the salient characteristics listed for the brand name items. For example, one of the brand name jet washer/degreasers was required to be equipped with a 7.5 horsepower pump motor rated at 150 gallons per minute, whereas the "equal" product described in the literature submitted with the bid was equipped with a 5 horsepower pump rated at 100 gallons per minute. No literature at all was submitted for various other items. While the submitted literature stated the machines "will be built to spec[ification]," the specific modifications to the offered models were not described in any way. Discount Machinery's

assurances that the Triangle Engineering equipment would be custom made does not satisfy the requirement that a bidder affirmatively demonstrate equivalency. See Wayne Kerr Inc., B-217528, Apr. 18, 1985, 85-1 CPD ¶ 445. Therefore, Discount Machinery's bid was properly rejected as nonresponsive.

The protest is denied.


for James F. Hinchman
General Counsel