



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

Decision

Matter of: Werres Corporation
File: B-256240
Date: May 27, 1994

Barry Roberts, Esq., Roberts & Hundertmark, for the protester.
Nora A. Huey, Esq., General Services Administration, for the agency.
Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where invitation for bids incorporated by reference the standard descriptive literature clause but did not specify what type of literature was required and for what purpose, the solicitation effectively did not require submission of descriptive literature; bid which did not include descriptive literature thus cannot be rejected as nonresponsive.

DECISION

Werres Corporation protests the award of a contract to any other bidder under invitation for bids (IFB) No. 9FBG-OLC-A-A1079/94, issued by the General Services Administration (GSA) for a conveyor system to be used at GSA's Western Distribution Center in Stockton, California. The protester alleges that as the only bidder submitting descriptive literature with its bid, it is entitled to receive the award.

We deny the protest.

Issued on October 21, 1993, the IFB contemplated award of a firm, fixed-price contract to build a conveyor system and included detailed technical specifications and drawings for the conveyor's operation and design. For example, the IFB provided at paragraph C.2.2.d that the conveyor system include a "60 ft. long spool driven zero pressure accumulation conveyor, 1-1/2 HP @ 90 FPM."

The solicitation incorporated by reference the clause at Federal Acquisition Regulation (FAR) § 52.214-21, entitled "Descriptive Literature." The clause defines descriptive

literature as information submitted as part of a bid which is required to establish, for the purpose of evaluation and award, the significant details of the product offered as specified in the solicitation. The clause advises that descriptive literature, "required elsewhere in this solicitation," must be identified to show the items to which it applies and must be received by the time of bid opening. The clause also cautions that the failure of descriptive literature to show that the product offered conforms to the IFB's requirements will result in the rejection of the bid. Except for this clause (incorporated by reference), the solicitation contains no other references to the reason for, or the nature of, the requirement for descriptive literature. Nor did the solicitation explain how such literature would be used in evaluating bids.

Eight bids were received by the December 30 amended bid opening date. Werres's \$106,560 bid was the highest, and the low bid, \$71,597, was submitted by the Gibson Company.¹ Werres was the only bidder that furnished descriptive literature with its bid.

By letter dated January 5, 1994, Werres filed an agency-level protest against award to the Gibson Company or any other bidder not offering a zero pressure accumulation conveyor system. Werres filed an additional ground of protest with GSA by letter dated January 14, against award to any bidder that did not submit descriptive literature with their bid, as required by the solicitation. That same date, Werres filed a protest with our Office.

Werres contends that the bids of all other bidders were nonresponsive because they did not include descriptive literature, as required by the IFB. In this regard, the protester "suspect[s] that [the low bidder] is offering minimum pressure conveyor not zero pressure." [Emphasis in original.]

Where descriptive literature is required to be furnished for use in the bid evaluation, a bid may be rejected as nonresponsive if the bid and the literature submitted with the bid do not clearly show that the offered product complies with the specifications. National Elec. Constr., Inc., B-245943, Jan. 22, 1992, 92-1 CPD ¶ 102. As discussed below, we conclude that bidders here were not required to provide descriptive literature for bid evaluation purposes.

The purpose of a descriptive literature clause is to require information showing the characteristics, construction, or operation of a product that affirmatively establishes

¹The other bids ranged in price from \$71,622 to \$90,643.

conformance with solicitation requirements. FAR § 14.202-5(d)(1) requires that solicitations requiring descriptive literature clearly state "what descriptive literature is to be furnished" and "the purpose for which it is required." The standard descriptive literature clause, as incorporated by reference in this IFB, refers to literature "required elsewhere in this solicitation," FAR § 52.214-21(b), and states that the literature is required to establish "details of the product offered that are specified elsewhere in the solicitation." FAR § 52.214-21(a). It is our view that the descriptive literature clause operates together with other solicitation requirements for the literature since the clause clearly refers to "[d]escriptive literature, required elsewhere in this solicitation." Without such further requirements in the solicitation, the clause is basically meaningless since it does not operate independently. International Mailing Sys., Inc., B-246214, Feb. 25, 1992, 92-1 CPD ¶ 224.

While the solicitation here did incorporate by reference the standard descriptive literature clause, it did not inform bidders as to what specific descriptive literature is required and for what purpose. This omission left to the speculation of bidders the type of descriptive literature required and the specifications for which the agency needed the literature; thus, the descriptive literature clause is rendered inapplicable. Id.; Futura Sys., Inc., 70 Comp. Gen. 365 (1991), 91-1 CPD ¶ 327. Since the IFB failed to effectively require descriptive literature, the bidders' failure to submit such literature with their bids provides no basis for concluding that bids are nonresponsive. Tektronix, Inc.; Hewlett Packard Co., 66 Comp. Gen. 704 (1987), 87-2 CPD ¶ 315.²

The protest is denied.


 Robert P. Murphy
 Acting General Counsel

²Where, as here, the solicitation does not describe the use and application of descriptive literature, any literature actually furnished need not address any specific requirement. The submission is therefore considered "unsolicited" literature for bid evaluation purposes. See Williams Env'tl. Servs., Inc., B-250404, Jan. 29, 1993, 93-1 CPD ¶ 80.