



Decision

Matter of: RCP Shelters, Inc.
File: B-256258; B-256258.2
Date: June 2, 1994

Robert Ritter for the protester.
Col. Riggs L. Wilks, Jr., and Capt. Gerald P. Kohns,
Department of the Army, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Bid of "equal" product under brand name or equal
solicitation was properly rejected as nonresponsive where
the descriptive literature submitted with the bid failed to
demonstrate compliance of the "equal" products with salient
characteristics listed in the solicitation.

DECISION

RCP Shelters, Inc. protests the rejection of its bid as
nonresponsive and the award of a contract to Recreation
Resource/Iron Mountain Forge, for a pavilion and 25 shelters
with picnic tables, under invitation for bids (IFB)
No. DABT31-94-B-0004, issued on a brand name or equal basis
by the Department of the Army.

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

The IFB specified the Iron Mountain Forge Model 8-3036 SU-2
as the brand name product for the pavilion and the Iron
Mountain Forge Model 868-S1-U2 as the brand name product for
the shelters with picnic tables, and listed the salient
characteristics that had to be satisfied by any product
offered as an equal to the brand name items. The IFB
required that a bidder offering an "equal" product:
(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 offered product to conform to the salient characteristics by clearly marking up the descriptive literature to reflect the change(s).

Seven bids were submitted by the December 30, 1993, bid opening date. The agency rejected RCP's low bid as nonresponsive because its descriptive literature failed to show that it was offering an equal product. Award was made on January 11, 1994, to Recreation Resource, the second-low bidder, which offered the brand name product for both items. This protest followed.

The gist of RCP's argument is that the IFB did not contain sufficient information for it to make the necessary calculations so that it could offer "equal" products that would meet the required specifications.

To be responsive to a brand name or equal IFB, bids offering "equal" products must conform to the salient characteristics of the brand name products listed in the solicitation. A bidder must submit with its bid sufficient descriptive literature to permit the contracting agency to assess whether the "equal" products meet 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-229397, Mar. 25, 1988, 88-1 CPD ¶ 308.

The descriptive literature that RCP submitted with its bid failed to show compliance with the salient characteristics listed for the brand name product. The specifications in the IFB contained the exact dimensions for the columns and beams. Specifically, for the pavilion, the columns were required to be fabricated from 6" x 6" x 3/16" structural steel tubing, and steel beams fabricated from 6" x 10" x 3/16" structural steel tubing. RCP's bid only included a measurement of 3/16", for the thickness of the columns and beams, and stated: "[s]izes to be determined by loading requirements to meet or exceed all standards and code requirements." Accordingly, RCP's bid was properly rejected as nonresponsive. Id.

To the extent that RCP argues that the IFB did not include sufficient information, such as the live/snow load, the wind load, proper seismic zone requirements, and the appropriate local and state building code, to calculate exactly the dimensions of the columns and beams, this aspect of its

protest is untimely. Our Bid Protest Regulations require that protests based upon alleged improprieties in an IFB which are apparent prior to the bid opening time be filed prior to that time. 4 C.F.R. § 21.2(a) (1994).

Finally, RCP argues that if its bid was nonresponsive, the bid submitted by Recreation Resource also should be considered nonresponsive. RCP reasons that even though Recreation Resource's bid was based upon supplying the brand name items listed in the IFB, Recreation Resource was implicitly relying upon certain manufacturer descriptive literature that, according to RCP, in some respects did not show compliance with the IFB.

We find no merit to this argument. Recreation Resource's bid took no exception to the IFB's terms; because Recreation Resource was offering the exact brands and models listed in the IFB, there was no requirement that Recreation Resource provide descriptive literature, Air and Hydraulic Equip., Inc., B-250332, Jan. 22, 1993, 93-1 CPD ¶ 54, and Recreation Resource did not submit any such literature. The manufacturer's literature referred to by RCP has no bearing on the responsiveness of Recreation Resource's bid.

The protest is denied in part and dismissed in part.

/s/ John M. Melody
for Robert P. Murphy
Acting General Counsel