



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allotech
File: B-259154
Date: February 13, 1995

Timothy Miguel Willardson, Esq., for the protester, Sherry Kinland Kaswell, Esq., and Justin P. Patterson, Esq., Department of the Interior, for the agency. Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where invitation for bids contained 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

Allotech protests the award of a contract to any other bidder under invitation for bids (IFB) No. 1425-4-SI-40-16550, issued by the Bureau of Reclamation, Department of the Interior, for 36 outdoor interpretive signs for the Colorado River Storage Project. The protester alleges that it was the only bidder to have submitted descriptive literature with its bid and therefore should have received the award.

We deny the protest.

The IFB was issued on July 13, 1994, and included detailed technical specifications at section C for the fabrication and delivery of the signs. For example, the IFB provided at paragraph C.1.2 that the signs be fabricated "from 1/4 inch stainless steel"; paragraph C.3.3 required sign posts to be 6 feet long with square aluminum tubing. Section C was entitled "Description/Specifications/Work Statement."

The solicitation, at paragraph L.4, contained the clause found 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, the IFB contained no narrative explanation of 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 August 26 bid opening date. Prices ranged from approximately \$32,000 to \$64,000. Allotech was the highest bidder, eighth in line for award initially. Allotech states that it submitted the only responsive bid because it was the only bidder that furnished descriptive literature with its bid as required by the IFB. Allotech filed an agency-level protest; after the contracting officer denied the agency-level protest, this protest to our Office followed.

To be responsive, a bid must represent an unequivocal offer to provide the exact thing called for in the IFB such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Aidco, Inc., B-249736; B-249736.2, Dec. 11, 1992, 92-2 CPD ¶ 407. Where descriptive literature is required to be supplied for use in the bid evaluation, a bid may be rejected as nonresponsive if the bid and the data submitted with the bid do not clearly show that the offered product complies with the specifications. Id. 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 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 contained in this IFB, refers to literature "required elsewhere in this solicitation," FAR § 52.214-21(b), and also 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 therefore our view that the descriptive literature clause operates together with other solicitation requirements for the literature; 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.

Allotech argues that the IFB contained the specifications of the statement of work (section C) which constituted information "elsewhere in the solicitation" and which provided bidders with the technical requirements with which their descriptive literature had to show compliance. We do not accept this argument. While the IFB here contained the standard descriptive literature clause, it did not inform bidders as to what specific descriptive literature was required and for what purpose. The IFB did not include a list of the particular requirements for which descriptive literature was needed. Because the IFB's specifications contained many different requirements, a bidder, from reading the IFB's descriptive literature clause, would not reasonably be aware of what literature, if any, was required, and for what purpose. See Koch Corp., 66 Comp. Gen. 92 (1986), 86-2 CPD ¶ 544; Cuernilargo Elec. Supply, B-229942, May 10, 1988, 88-1 CPD ¶ 449. In short, the IFB left to the speculation of bidders the type of descriptive literature required and the specifications for which the agency needed literature. As a result, we conclude that the IFB did not include a valid requirement to submit descriptive literature for bid evaluation purposes, and that the agency was not required to reject the evaluated low bid for failure to submit such descriptive literature.

The protest is denied.

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for Robert P. Murphy
General Counsel