



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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B-178245

May 31, 1973

Struthers Electronics Corporation  
Douglas Microwave Division  
Railroad Place  
Mamaroneck, New York 10543

Attention: William Loebel  
Vice President

Gentlemen:

We refer to your letter dated March 19, 1973, and the subsequent correspondence, protesting the award of a contract to the Narda Microwave Corporation, under IFB N00039-73-B-0262, issued by the Navy Electronic Systems Command, Washington, D. C. (HAVELEX), on January 15, 1973.

The subject IFB requested bids on a "Brand Name or Equal" basis for Fixed Precision Coaxial Attenuator Sets. The purchase description set forth salient characteristics of the brand name product, Narda Microwave Corporation's (Narda) Model 5779. In this connection the IFB included the "Brand Name Or Equal" clause which provided in pertinent part as follows:

(c) (1) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Solicitation, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in his offer, as well as other information reasonably available to the purchasing activity. CAUTION TO OFFERORS. The purchasing activity is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of his offer all descriptive material (such as

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cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the requirements of the Solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the offeror proposes to modify a product so as to make it conform to the requirements of the Solicitation, he shall (i) include in his offer a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after time set for opening offers to make a product conform to a brand name product referenced in the Solicitation will not be considered.

Three bids were received and opened on February 28, 1973, and your firm was low bidder. You offered your Douglas Microwave Division Model No. APC F 1125 S-1, as being equal to the brand name product. However, since you did not include any descriptive data with your bid, the agency on February 28, 1973, telephoned your firm an order to obtain a citation to relevant catalog data. It is reported that you referred the agency to the catalog for your model N126.

The agency reports that an evaluation was performed on your N126 model and it was ascertained (1) that your model had a length of 3 inches whereas the not to exceed dimensions of the salient characteristics were 2 43/64 inches; (2) that the data showed a Type "N" connector while the listed salient characteristic was for an APC-7 connector; and (3) that the salient characteristics required a frequency range of from 0-18GHZ, whereas the N126 data showed a frequency range of 0-10GHZ. Therefore, the agency determined that your model was not equal in all respects to the salient characteristics and your bid was rejected as nonresponsive. Award was made to the second low bidder, Narda Microwave Corporation, on March 14, 1973. Your protest to this Office followed.

You contend that the item offered in your bid is a variation of your M126 model, and that when the Type "N" connector used on the M126 is replaced by a precision type APC 7 connector, this automatically increases the frequency range as required. You state that this information was provided to the agency representative (Mr. Hannon of NAVELEX) during the course of the February 28 telephone conversation and that in fact the same information is indicated in your bid which denoted your model as APC F 1125 S-1. With regard to the length of the unit, you state that Mr. Hannon was advised that the resulting length would be identical to the Narda unit. Finally, you report that you offered to supply any further information to the agency to show that your product was in accordance with the requirements of the solicitation.

The Brand Name or Equal clause of the solicitation, quoted above, provides that if a bidder proposes to furnish an equal product, the bidder must include descriptive data sufficient to permit evaluation of the "equal," product. The clause also provides that if the bidder proposes to modify a product to conform to the salient characteristics, a clear description of the proposed modifications must be furnished with the bid.

Thus, the Brand Name or Equal clause makes it incumbent upon each bidder offering other than the referenced item to provide with its bid sufficient descriptive data to enable the contracting agency to determine that the item offered will meet the needs of the Government as specified.

This information may include catalog references, other pertinent data, and/or information concerning a bidder's proposed modifications of an existing product. However, all such information must either (1) be furnished with, or identified in the bid or (2) be reasonably and readily available to the purchasing activity in the event that such information regarding the specific model offered has been published (i.e., in a catalog). See B-176431(1), January 22, 1973.

It is clear that your bid on your model APC F 1125 S-1 could not be evaluated in the absence of any catalog data for that model. While your oral statement made subsequent to bid opening indicated that your standard model M126 was to be modified to meet the agency's requirements, that fact does not compensate for your failure to state in your bid that you proposed to offer a modified version of your M126 model and to furnish a

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clear description of such proposed modifications. In this regard, the time for determining the responsiveness of a bid is at the time of opening and not thereafter. 50 Comp. Gen. 193 (1970); B-176707, January 24, 1973.

Accordingly, we find that your bid was properly rejected, and your protest must be denied.

Sincerely yours,

Paul G. Tomblin

Acting Comptroller General  
of the United States