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JAMES MCKEE
P.L.#1

DECISION



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

FILE: B-186973

DATE: November 5, 1976

MATTER OF: Fabcraft Inc., dba FABCO

DIGEST:

Determination to reject low bid as nonresponsive due to insufficient descriptive literature which did not demonstrate bidder's compliance with specifications was proper as descriptive literature was necessary for bid evaluation and to assure conformance with specifications.

On March 30, 1976, the Veterans Administration, Long Beach, California (VA), issued invitation for bids (IFB) No. 600-76-76 to furnish and install sun control polyester film to the windows of various buildings at the VA Hospital, Long Beach, California.

Five bids were received in response to the IFB and the low bid was submitted by Fabcraft Inc., dba FABCO (FABCO). FABCO's bid was rejected by the contracting officer following a protest by the second low bidder, ACCO Solar Control (ACCO), as nonresponsive because the descriptive data submitted with the bid was not sufficient to determine if the item to be supplied complied with the specifications. FABCO has protested the action of the VA to our Office. Award has been made to ACCO; however, a stop work order has been issued by the VA pending this decision by our Office.

The IFB contained the following requirement concerning the submission of descriptive literature:

"11. REQUIREMENT FOR DESCRIPTIVE LITERATURE:

Descriptive Literature, meaning information such as cuts, illustrations, drawings and brochures, which show the characteristics of the sun control film as specified in this Invitation for Bids, must be furnished as part of the bid and must be received before the time set for opening bids. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the product the bidder proposes to furnish as to performance characteristics, congruency with specifications, and warranty certification.

"Failure of descriptive literature to show that the product offered conforms to specifications and other requirements of this Invitation for Bids, will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the IFB will require rejection of the bid, except as provided by established regulations concerning late bids, as set forth elsewhere in the Invitation for Bids."

FABCO included brochures, test data, and samples of the film with its bid; however, the contracting officer determined that the literature did not show that the offered film complied with the specifications, especially the U-factor specifications. The IFB required the film to have a U-factor not exceeding .90 on 1/4-inch clear glass. The U-factor is the overall heat transfer coefficient and was considered of extreme importance to the VA due to its direct relation to energy savings.


The material submitted with FABCO's bid did not state what the U-factor for the film was. Upon inquiry by the contracting officer to FABCO as to how its data showed compliance with the specifications, FABCO stated in a letter dated May 17, 1976, that the U-factor was .91. However, this exceeded the specification requirement of a maximum U-factor of .90. On June 17, 1976, FABCO orally advised the contracting officer that the U-factor was 1.10. By letter dated June 17, 1976, the contracting officer allowed FABCO until June 30, 1976, to substantiate that its film complied with the specifications. When FABCO had not submitted anything further by June 30, 1976, award was made to ACCO.

The descriptive literature clause included in the IFB provided that the data was required to establish details of the film offered and, further, that failure of the data to show conformance with the specifications would require rejection of the bid. Our Office has held that the submission of descriptive data, where the data is used for bid evaluation is a matter of responsiveness and where such data indicates a deviation from the specifications rejection of the bid is required. 40 Comp. Gen. 132 (1960) and 46 Comp. Gen. 315 (1966). In the instant case, the VA has determined that the data submitted by FABCO was insufficient to assure that the film offered would meet all the specifications. The determination of whether a bidder's product meets the specifications is primarily within the jurisdiction of the procuring agency and we will not substitute our judgment for that of the procuring agency in the absence of clear and convincing evidence that the agency determination

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is in error or arbitrary. 49 Comp. Gen. 377 (1969). No such evidence has been presented here and, therefore, we find the rejection of FABCO's bid to have been proper.

Because of the above holding, it is unnecessary to consider the other elements of FABCO's bid which the VA found to be insufficient or unclear.


Deputy Comptroller General
of the United States