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DECISION



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

FILE: B-187033

DATE: December 17, 1976

MATTER OF: Atlantic X-Ray Service, Inc.

DIGEST:

Protester failed to provide any descriptive literature with bid in response to brand name or equal solicitation. Responding to agency query, protester provided such literature subsequent to bid opening. Since agency could not discern from this descriptive literature whether bidder's product met agency's requirements, bid was properly rejected as nonresponsive. Moreover, pursuant to NASA P.R. 1.1206-3(b) bid was also nonresponsive based on protester's intent to modify product (without clear description) subsequent to bid opening.

By letter dated July 20, 1976, Atlantic X-Ray Service, Inc. (Atlantic), has protested the award of a contract to the Picker Corporation (Picker) under invitation for bids (IFB) 1-104-4050.0334, issued on June 10, 1976, by the National Aeronautics and Space Administration (NASA) on a brand name or equal basis for a medical X-ray system. Pursuant to the provisions of NASA Procurement Regulation (P.R.) 1.1206-2 (1975 ed.) the IFB identified the brand name products as those of Picker. At bid opening on June 25, 1976, the following bids were received:

Atlantic	\$17,467
Picker	20,450
General Electric Corporation	30,643

Atlantic which bid on an "equal" basis asserts that: (1) it was the low responsive bidder; (2) the equipment upon which it bid met or exceeded all specifications in the IFB; (3) the warranty offered by Atlantic was superior to the warranties offered by other bidders; (4) NASA did not have sufficient information to properly evaluate its bid.

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NASA P.R. 1.1206-3(b) (1975 ed.), which was incorporated by reference into the IFB, in pertinent part provides:

"(1) If the bidder 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 Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids 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 bidder or identified in his bid, as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The procurement office is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the procurement office. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the procurement office to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the bidder 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 procurement office.

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

"(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered."

NASA reports (and Atlantic does not deny) that Atlantic failed to furnish any descriptive literature with its bid. Thus, NASA maintains that it could not be determined from Atlantic's bid: (1) whether the products upon which Atlantic bid met the IFB's salient characteristic requirements; and (2) precisely what the Government would be purchasing from Atlantic. Consequently, NASA requested Atlantic to furnish the necessary descriptive literature.

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In response to this request, Atlantic submitted its descriptive literature, also indicating in a covering letter its intent to modify the "equal" products upon which it bid. However, Atlantic neither described its intended modifications nor appropriately marked its descriptive literature in this regard, as required by NASA P.R. 1.1206-3(b), supra.

After reviewing the descriptive literature submitted by Atlantic NASA was unable to discern whether the equipment upon which Atlantic bid met the Government's requirements. Hence, Atlantic's bid was determined to be nonresponsive and award was made to Picker on July 12, 1976.

In 50 Comp. Gen. 138 (1970), we interpreted a "brand name or equal" clause, almost identical to that in the instant IFB, as not prohibiting the consideration of descriptive data furnished by a bidder to a procuring activity subsequent to bid opening, if the descriptive data furnished was publicly available prior to bid opening. It is unclear from the instant record whether the descriptive data which Atlantic furnished was publicly available prior to bid opening; however, we believe that in line with a previous decision of our Office cited infra, even if it was available prior to bid opening, based on Atlantic's failure to adequately demonstrate that its equipment met the IFB's requirements, Atlantic's bid was properly rejected as nonresponsive.

Similar to the instant case, the decision of our Office in B-172588, July 16, 1971, also involved the consideration of a factual situation wherein the low bidder failed to provide descriptive literature in response to a "brand name or equal" solicitation, subsequently submitted such data after bid opening, but had its bid rejected as nonresponsive based on the inadequacy of the descriptive data provided. Under these circumstances we approved of the procuring activity's rejection of the bid as nonresponsive. We believe that this holding, involving as it did a factual situation that for practical purposes is identical to that of the instant case, is controlling, and that Atlantic's bid was thus properly rejected as nonresponsive.

Additionally, it is clear that Atlantic's intent to modify (without a clear description) the "equal" products upon which it bid, as noted above, was manifested subsequent to bid opening contrary to the provisions of NASA P.R. 1.1206-3(b), supra. Thus Atlantic's bid was also nonresponsive on this basis.

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Accordingly, the protest is denied.

Milton Foster

Acting Comptroller General
of the United States