

DOCUMENT RESUME

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[Questioning Another Bidder's Technical Responsiveness to Invitation for Bi's]. B-187588. June 6, 1977. 3 pp.

Decision re: John Pluke Mfg. Co., Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Navy; Department of the Navy: Navy Ships Parts Control Center, Mechanicsburg, PA; Aul Industries, Inc.

Authority: A.S.P.R. 7-2003.10. A.S.P.R. 1-1206.3(d). P-179767 (1974).

The Navy's technical determination in a contract award was questioned. The award to a competitor, who offered an "or equal" product under the brand name or equal clause, was proper because the product met invitation for bids' salient characteristics, despite protester's contention that the competitor did not establish technical equality of its model with the brand name model. (QM)

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DECISION



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

FILE: B-187588

DATE: June 6, 1977

MATTER OF: John Fluke Manufacturing Co., Inc.

DIGEST:

Award to bidder offering "or equal" product under brand name or equal clause is proper where product met IFB salient characteristics, notwithstanding protester's contention that bidder did not establish technical equality because its product exists only in conceptual stage.

John Fluke Manufacturing Co., Inc. protests the award made to Aul Industries, Inc., the only other bidder under Department of the Navy Invitation for Bids (IFB) N00104-76-B-0839, issued by the Navy Ships Parts Control Center (NSPCC), Mechanicsburg, Pennsylvania for solid state AC/DC differential voltmeters, Fluke models 893A, 893A-01 or equal. The brand name or equal clause (ASPR 7-2003.10) was incorporated by reference into the IFB. Aul, the low bidder, submitted its model 1412 voltmeter in two alternate physical configurations as an "equal" product (models 1412A and 1412B). The Navy made award to Aul on September 24, 1976.

Fluke questions the Navy's technical determination that Aul's model 1412 was equal to the brand name and technically responsive to the IFB. In part, this argument stems from an advisory message dated September 9, 1976 from the Naval Electronics Systems Command (NAVELEX) to NSPCC, entitled "Review of Aul Instruments Model 1412 as 'or equal' to Fluke 393A." The message advised that the instrument described as the Aul model 1412 met the salient technical characteristics required by the solicitation. However, NAVELEX added that the Aul bid set suggested that the model 1412 existed only in the design phase and would be a modified version of model ME-202/U, which Aul was

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manufacturing at the time under contract for the Department of the Army. NAVELEX concluded that since no modifications were described in Aul's offer and since there was no bid sample, the equality of Aul model 1412 to the brand name could not be established. NAVELEX's conclusion notwithstanding, NSPCC determined that Aul's bid was responsive to the IFB, and Aul received the award.

While Fluke states that it disagrees with Navy "about Aul's bid being responsive," it does not allege that Aul's model 1412A, the model which Aul is required to furnish under its contract, deviates from any of the salient characteristics of the IFB. (Fluke did point out that Aul model 1412B does not meet certain salient characteristics; however, it dropped this aspect of the protest when it was informed by Navy that Aul's contract had been "clarified" by amendment to require delivery of the 1412A model.)

Instead, Fluke argues that the Aul model is "still in the conceptual stage" and that the bidder "did not provide complete technical supportive information" to substantiate compliance with the salient characteristics. It therefore contends that the data provided with the Aul bid package does not demonstrate technical equality of its model with the brand name model as required by the brand name or equal clause. Fluke questions, for example "how could Aul or NAVELEX substantiate a particular or any salient characteristic such as a MTFB of 10,000 hours if the data presented showed the Aul offered model 1412 was still in the conceptual stage?"

Fluke, however, misconstrues the purpose of the brand name or equal clause. Under that clause bidders offering equal products are required to furnish sufficient information with the bid so that the agency can determine whether the item offered meets the salient characteristics and to establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The clause further states that the information furnished may include references to information previously furnished or to information otherwise available

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to the agency. The IFB, however, as the protester recognizes, did not require that only proven or commercially available "or equal" models may be offered or that samples must be furnished by bidders offering equal products. See, in this regard, ASPR 1-1206.3(d) (1976 ed.). There is no question but that the Aul model 1412A described in the literature accompanying the Aul bid does contain all the salient characteristics listed in the IFB specifications. As we noted in SEG Electronics Corporation, B-179767, May 16, 1974, 74-1 CPD 258, conformity with an IFB's salient characteristics ordinarily suffices to support selection of an "or equal" item.

It is clear, therefore, that Aul did comply with the data requirements of the brand name or equal clause. Accordingly, the protest is denied.


Deputy Comptroller General
of the United States