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M. Hoshu
Risi

DECISION



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

FILE: B-191024

DATE: April 27, 1978

MATTER OF: Risi Industries, Inc.;
Westmont Industries

DIGEST:

1. CAO will not consider objections to agency finding that low bid was nonresponsive where issues raised are academic as result of bidder's refusal to extend bid acceptance period in face of specific request to do so by agency.
2. Bid was properly determined nonresponsive where required descriptive data did not show compliance with solicitation requirement and fact that no exceptions were taken to solicitation requirements does not substitute or compensate for inadequate descriptive data.

The Defense Depot Tracy, Tracy, California, Defense Logistics Agency (DLA), issued invitation for bids (IFB) No. DSA-095-77-B-0015 on July 22, 1977, for all labor, equipment and material to install a mechanized materials sortation system.

While the specifications designated certain components and equipment by brand name, the IFB contained a brand name or equal provision which gave the bidders an opportunity to bid on "equal" items. Amendment No. 0003 to the IFB retained a requirement for "push-pull" type diverters.

There were six bids received from five bidders with Risi Industries, Inc. (Risi), the low bidder and the alternate of Westmont Industries' two bids (Westmont) the second low bid. Initially, Sandvik Conveyor, Inc. (Sandvik), the third low bidder, protested to our Office alleging that both low bids were nonresponsive. DLA agreed with Sandvik but determined that Sandvik's bid was also nonresponsive and recommends that award be made to the fourth low bidder. Consequently, Sandvik withdrew its protest. However, Risi and Westmont filed their respective objections to DLA's finding that each was nonresponsive. Award has been withheld pending our resolution of the matter.

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Risi Industries, Inc.

Risi's initial position was that its bid was the low responsive bid and as such award should be made to Risi without further delay and, if not, stated an intention to protest. In response to DLA's request for comments regarding Sandvik's allegations that Risi's bid was nonresponsive, Risi stated that none of them were "valid protest discrepancies to our [Risi] bid package * * *." When DLA determined Risi's bid to be nonresponsive, Risi, by letter dated March 27, 1978, and received here on March 31, 1978, filed objections to the DLA determination and requested an opportunity to review the bid of the fourth low bidder if the Government decided to so award.

However, the record indicates that DLA, on March 15, 1978, requested that all bidders extend their bid acceptance time from March 28, 1978, through April 28, 1978. By telegram, dated March 27, 1978, the same date as Risi's letter to our Office, Risi stated:

"It is regretted that Risi Industries, Inc. cannot comply with request in referenced letter and will not extend the bid acceptance period of subject IFB."

Under these circumstances, it appears that the issues raised by Risi respecting bid responsiveness are academic. Accordingly, our Office will not pursue the matter further. See Hugo Neu Steel Products, Inc., B-184888, February 24, 1976, 76-1 CPD 127.

Westmont Industries

Westmont's alternate bid offered, as an "equal" product, the Acco Dispatch System and there was descriptive data pertaining to that system submitted. DLA argues that Westmont's alternate bid is nonresponsive since it fails to indicate that the Acco diverter is of the "push-pull" type as required by the IFB (paragraphs 5.8.2.7 and 5.8.5.9 (Amendment 0003)).

Westmont contends that its bid was submitted in full compliance with all of the terms and conditions of the IFB. In addition, Westmont points out that its bid was "without exceptions to any or all items

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which includes the Push-Pull Diverters." Therefore, Westmont objects to DLA's isolation of one item, the push-pull type diverter, to characterize the bid as nonresponsive.

The IFB contained the standard brand name or equal clause as specified in the Armed Services Procurement Regulation (ASPR) § 7-2003.10 (1976 ed.), which provides, in pertinent part, that:

"(c)(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 purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. 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 purchasing activity 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 purchasing activity."

The IFB also contained (See ASPR § 7-2003.31), in Section C (viii), page 16, the following requirement for descriptive literature:

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"REQUIREMENT FOR DESCRIPTIVE LITERATURE

"(a) Descriptive Literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to design, performance characteristics and operation.

"(b) Failure of descriptive literature to show that the product offered conforms to the 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 Invitation for Bids will require rejection of the bid, except that if the material is transmitted by mail and is received late, it may be considered under the provisions for considering late bids, as set forth elsewhere in this Invitation for Bids."


The responsiveness of an "equal" bid submitted in response to a brand name or equal procurement is dependent on the completeness and sufficiency of the descriptive information submitted with the bid, previously submitted information, or information otherwise reasonably available to the purchasing activity. Environmental Conditioners, Inc., B-188633, August 31, 1977, 77-2 CPD 166; Ocean Applied Research Corporation, B-186476, November 9, 1976, 76-2 CPD 393. A review of the descriptive data submitted and the Westmont bid reveals that the bid does not show compliance with one of the Government's stated requirements - diverters must be of the "push-pull" type. Consequently, the bid must be rejected as nonresponsive. SEG Electornics Corporation and Boonton Electronics Corporation, B-179767, May 16, 1974, 74-1 CPD 258.

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We take particular note of the fact that Westmont does not argue that the data shows compliant diverters. Rather, Westmont argues only that it took no exceptions to the IFB. Not stating any exceptions in a bid to the requirements of an IFB does not substitute or compensate for inadequate descriptive data. See 45 Comp. Gen. 312, 316 (1965).

We note that there were other questions raised concerning the responsiveness of Westmont's bid, specifically: (1) the restrictive legend on drawings submitted by Westmont, (2) the alleged lack of information pertaining to sortation belts, (3) the failure to indicate the model number for the Acco diverter, (4) the failure to indicate the offering of a Stewart Engineering & Equipment Co., horizontal diverter for station 17, and (5) the submission of allegedly nonspecific descriptive data regarding the fabrication of the rollers to be furnished as a part of the sortation system. However, based on the foregoing, these questions are rendered academic.

Accordingly, Westmont's protest is denied.


Deputy Comptroller General
of the United States