

DECISION



18860 PL-1 Lieberman
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-201065

DATE: July 20, 1981

MATTER OF: Casecraft, Inc.

DIGEST:

1. Where "equal" product in bid did not conform to salient characteristics of brand name product, agency properly rejected bid as nonresponsive.
2. Federal Procurement Regulations § 1-2.408 (a)(1) requires that low bidder be promptly notified of rejection of its bid, but does not require that bidder be notified of non-responsiveness of bid prior to award.
3. Request, after bid opening, to submit different bid sample model to replace technically unacceptable bid sample model originally submitted was properly refused by agency since bid may not be changed after bid opening.
4. Protest, that brand name or equal specifications are unduly restrictive of competition, which is filed after bid opening is untimely under our Bid Protest Procedures and not for consideration on merits.

Casecraft, Inc. (Casecraft), protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. B0/TC-M-00194, issued by the General Services Administration (GSA). The IFB was for three basic products: general purpose briefcases (items 1-14), general utility cases (items 15-28), and envelope portfolios (items 29-41). Each item under the three products was for a different geographic zone, with award to be made on an item-by-item basis.

At bid opening, Casecraft, a small business, was determined to be the low bidder for the general utility cases, items 15-28, and the fourth low bidder for general purpose briefcases, items 1 and 2.

[Protest of Bid Rejection as Nonresponsive]

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The requirements had been solicited on a brand name or equal basis. A commercial item description (CID) listed acceptable manufacturer's products, along with a list of salient characteristics. Bidders were required by the IFB to provide two bid samples for evaluation to determine compliance with the salient characteristics. Bid samples were evaluated by GSA and on August 5, 1980, GSA determined that Casecraft's bid samples were compliant for all three products.

A preaward survey was requested by GSA on August 7, 1980, to evaluate Casecraft's capacity to produce items 15-28 and items 1 and 2. The survey report was received by the contracting officer on September 2, 1980, and, in addition to indicating that Casecraft's facilities were inadequate for production at the required level, the report noted that:

"* * * the [general utility cases] have injection molded side panels, which when assembled, do not meet the CID requirements for the inside dimension as the inside dimension is approximately two inches smaller than the outside width dimension. The CID requires the inside dimension to be no more than one inch less than the outside dimension."

Upon receipt of this report, the contracting officer requested reevaluation of the sample briefcases for compliance with the salient characteristics. On reevaluation, it was determined by GSA that the inside dimensions were, in fact, noncompliant with the CID dimension requirements. Accordingly, on September 5, 1980, GSA determined that Casecraft's bid was nonresponsive for items 15-28.

In addition to the above-noted survey findings, it was determined that Casecraft's financial status was "unsatisfactory." Because of these nonresponsibility findings, by letter dated September 4, 1980, GSA requested the Chicago office of the Small Business Administration (SBA) to consider issuance of a certificate of competency (COC), as required under Federal Procurement Regulations (FPR) § 1-1.708-2(a)(2) (1964 ed. amend. 192). GSA's letter indicated that Casecraft was the low responsive bidder for item 2 and items 15-28. Casecraft had become the low responsive bidder for item 2 because GSA had determined that all three lower bidders were ineligible for award. On September 5, 1980, the contracting officer telephoned

the SBA Chicago Office to request that COC consideration be given only in relation to item 2, because of the nonresponsiveness determination regarding the other items.

On October 10, 1980, the SBA issued a COC for Casecraft, without reference to any specific items in the IFB and on October 22, 1980, GSA notified Casecraft that it had been awarded a contract for item 2. On November 6, 1980, GSA advised Casecraft that its bid had been rejected as non-responsive for items 15-28 on the basis of the bid sample evaluation.

Casecraft argues, in substance, that GSA was required to notify it prior to the preaward survey if its samples were found nonresponsive. Casecraft also contends that it was inconsistent for GSA to award it a contract for item 2, where there were questions raised regarding compliance of its sample with four of the salient characteristics, but to reject its bid for items 15-28 as noncompliant for failure to comply with only one salient characteristic. Casecraft also objects to the preaward financial survey results and to the use in the IFB of brand name or equal specifications. Casecraft further argues that it should be permitted to submit another bid sample for evaluation on items 15-28. We find these contentions without merit.

When GSA determined that Casecraft's briefcases were noncompliant with the dimensional requirements, it properly rejected Casecraft's bid for items 15-28 as nonresponsive. As a general rule, the failure of a bid to meet salient characteristics is a proper ground for rejection and it is inappropriate for an agency to waive such a requirement. Paul F. Pugh & Associated Professional Engineers, B-199920, November 12, 1980, 80-2 CPD 358; Save-On Wholesale Products, B-194510, July 5, 1979, 79-2 CPD 9.

Casecraft has not disputed the specific dimensional deficiency of the sample which it submitted. Rather, Casecraft asserts that since the sample submitted for item 2 was initially found to have four possible salient characteristic compliance problems, and yet was eventually determined by GSA to be responsive, GSA was obligated to consider its bid for items 15-28 responsive since it was found to be noncompliant with only one salient characteristic. This is a specious argument. First, the sample submitted for item 2 apparently was eventually determined to be compliant by GSA. Moreover, even if Casecraft

were correct in its assertion that its item 2 was non-compliant, it would have no bearing on its bid responsiveness for the other items.

Regarding the notification procedure followed by GSA, it appears that the nonresponsiveness determination regarding the briefcases was, in fact, made on September 5, after the submission of the request for COC consideration to SBA. We understand that Casecraft may feel that it was misled by GSA with respect to the items for which it was in line for award, since it was not notified of the nonresponsiveness determination while the COC procedure was pending. However, under FPR § 1-2.408(a)(1) (1964 ed. amend. 68), while the procuring activity is required to promptly notify a low bidder that its bid has been rejected, there is no requirement that the agency provide notice of rejection prior to award. See E. Lehnert & Sons, Inc., B-194647, November 7, 1979, 79-2 CPD 336. GSA states, and SBA confirms, that GSA did advise SBA on September 5, that Casecraft was nonresponsive with respect to items 15-28. In addition, we note that, as a general rule, the issuance by SBA of a COC has no effect on a procuring agency's determination of what its technical requirements are. Thus, for example, even after issuance of a COC, an agency may properly reject a bid for technical unacceptability. See Aero Corporation, B-194445.3, December 21, 1979, 79-2 CPD 430; Essex Electro Engineers, Inc., B-186107, August 19, 1976, 76-2 CPD 176.

Casecraft further contends that once it was found nonresponsive for items 15-28, there was no need for a COC determination by the SBA because of the relatively small volume of the contract for item 2. However, GSA had found Casecraft nonresponsive with respect to all of the items, and there are no dollar thresholds applicable to the use of COC procedures. International Business Investments, Inc., et al., B-198894, February 23, 1981, 81-1 CPD 125. Therefore, consideration by SBA of issuance of a COC with respect to Casecraft's bid on item 2 was appropriate, even after the nonresponsiveness determination on the other items.

Casecraft's objection to the GSA determination of its financial nonresponsibility is completely immaterial. The basis of rejection of the bid for items 15-28 was the nonresponsiveness determination. A final, favorable responsibility determination was made as the result of

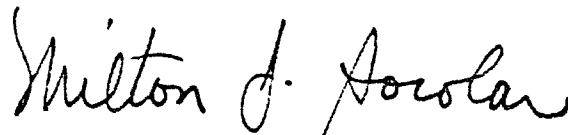
SBA's issuance of a COC. 15 U.S.C. § 637(b)(7) (Supp. I, 1977). This determination made Casecraft eligible for the award which it received for item 2.

Casecraft's contention that it should be permitted to resubmit another sample appears to indicate that it feels it should be able to substitute a different model briefcase. We infer this because Casecraft does not assert that the sample which it submitted was dimensionally compliant and impliedly concedes by its argument regarding the greater number of deficiencies for item 2 that the noncompliance determination was technically correct. The model substitution which Casecraft asserts it is entitled to make after bid opening is prohibited since it would vary a bid after bid opening to cure a defect which rendered the bid nonresponsive, thus giving one bidder an unfair advantage over others. Vemco Corporation, B-187318, February 15, 1977, 77-1 CPD 113.

Casecraft has also argued that the use in the IFB of brand name or equal specifications was unfairly restrictive. Since Casecraft did not raise this objection until after bid opening it is untimely under our Bid Protest Procedures which require that improprieties apparent in a solicitation be protested prior to bid opening. 4 C.F.R. § 20.2(b)(1) (1980).

Casecraft has raised a variety of other objections, most of which relate to particular internal bid evaluation procedures used by GSA during its conduct of this procurement. We have considered each of these allegations and find that the alleged improper practices were not substantive and did not prejudice Casecraft.

The protest is denied.



Acting Comptroller General
of the United States