

LIEBERMAN

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DECISION

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

FILE: B-203202.2

DATE: October 6, 1981

MATTER OF: Bado Engineering

DIGEST:

1. Where IFB identifies previously approved source-controlled components and requires bidder to list those that it will furnish so that procuring agency can insure that acceptance of bid will obligate bidder to meet agency's needs, bidder's failure to identify one such component requires rejection of bid as nonresponsive.
2. Requirement that bidder list source-controlled component which it proposes to utilize creates obligation that bidder furnish specified component, which is not otherwise required under IFB specifications.

Bado Engineering (Bado) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAA09-81-B-2047, issued by the Department of the Army (Army) for certain collimator cases.

We find the protest without merit.

The IFB referenced a drawing number for a particular "source controlled" component part of the solicited product. A source-controlled drawing is a manufacturer's drawing of an item or component part which has been tested and approved as meeting the Government's needs. The IFB cover sheet directs the bidder's attention to clause K.30, entitled "source controlled items or components," and warns that "the approved product being offered must be identified or the bid will be rejected."

Clause K.30 requires that "awards for any end items or components thereof which are source controlled items will be made only when such items or component parts have been tested and the source is listed as approved at the time set for opening of bids." The clause

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further requires bidders to list in indicated spaces the drawing numbers, manufacturers, and manufacturers' part numbers for the source-controlled items or components that they will provide. The clause explicitly provides that "any bid which does not identify the approved product being offered either above or elsewhere in the bid will be rejected." Bado omitted any reference to the source-controlled component part in question and, as a result, its bid was rejected by the Army as nonresponsive.

Initially, Bado argued that the listing was not required since the source-control drawing number was listed elsewhere in the bid. The Army cited our decision, J.M.T. Machine Company, B-199650, November 19, 1980, 80-2 CPD 382, in which we upheld the rejection of a bid as nonresponsive for an identical omission under an IFB containing the same requirement as is contained in clause K.30 in this case. In particular, in J.M.T., supra, we held that, by failing to name its source in this clause, the bidder frustrated the purpose of the source-controlled items clause, which was to obligate the bidder at the time of bid opening to furnish only the product of a source which had already been approved by the time bids were opened.

While Bado concedes that the holding in J.M.T. supports the agency's rejection of its bid, it argues that the case was wrongly decided. In particular, Bado contends that in J.M.T. our Office erroneously interpreted the source-controlled item clause as imposing an obligation on the bidder which was not otherwise required under the IFB specifications. Bado contends that the specifications, even with the inclusion of clause K.30, do not create any obligation on the part of the bidder to furnish only the product of a source which had already been approved by the time bids were opened. Therefore, Bado argues that, since the clause had no effect, its failure to complete clause K.30 did not constitute a material deviation rendering its bid nonresponsive.

This argument ignores both the language and the readily apparent purpose of clause K.30. The bidder's listing of the controlled source items and manufacturers in clause K.30 is a mandatory requirement of the IFB for the stated purpose of enabling the agency to ascertain that the source listed is approved at the time of bid opening. Thus, the agency required the bidder to identify

the source-controlled components in clause K.30 precisely in order to obligate the bidder to supply only those specified components which the agency had previously determined were acceptable. We have held that an IFB requirement that a bidder do something, in addition to merely signing the bid, such as the submission of descriptive data, in order to be responsive, is permissible. 40 Comp. Gen. 132 (1960).

Bado's argument seems to be based on a legend on the source control drawing which stated that a substitute item shall not be used without prior approval. Bado has read that legend in conjunction with a paragraph from the J.M.T. decision to reach the conclusion that a bidder is free, subject to approval, to substitute items for the source-controlled items up until the date of delivery. The pertinent paragraph from J.M.T. reads as follows:

"We believe that the substance of the legal obligation created by the specifications served only to limit acceptance of the end product and its component parts until such time as the components were approved by the agency, e.g., anytime before delivery. We do not believe the specifications served to obligate a bidder at the time of bid opening to furnish only the product of a source which had already been approved by the time bids were opened. Thus, without naming the source, JMT essentially frustrated the purpose of the source-controlled item clause." (Emphasis in original.)

When we referred to the "specification's" effect on the obligation of a bidder in the above quote from J.M.T., we intended "specifications" to refer specifically to the language in the legend on the drawings, not to the source-controlled item clause. While under the language of the legend the contractor has the right to substitute for a legitimate reason after award, this right does not affect the bidders' obligation to comply with the source-controlled item clause.

Bado has also questioned the procedure used by the Army to postpone bid opening for a period of 9 days. In

view of our finding that Bado's bid was properly rejected as nonresponsive, we need not address this issue.

The protest is denied.


Acting Comptroller General
of the United States