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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20546**

FILE: B-205091

DATE: April 5 1982

MATTER OF: TM Systems, Inc.

DIGEST:

Failure of "equal" product to meet all of the salient characteristics required by "brand name or equal" invitation properly resulted in rejection of bid as nonresponsive, where agency has justified the specifications as reflecting its needs.

TM Systems, Inc. (TM), protests the rejection by the Department of Commerce (Commerce) of its low bid submitted in response to invitation for bids (IFB) No. SA-RSA81-0027. TM's bid was rejected as nonresponsive because it was not in compliance with two of the solicitation's salient characteristics listed in the IFB. TM contends that its bid was responsive because although it did not comply with the salient characteristics themselves, it did comply with their overall intent. For reasons stated below, the protest is denied.

The IFB called for bids to provide 250 units of VF Level Measurement Test Sets and described the test sets as Datacomm Management Sciences, Inc., model TS-5, "or equal," and listed six salient characteristics which any product offered as "equal" would have to meet. The two salient characteristics which TM failed to meet were a battery status light and a push-to-read button. TM offered its model-517 as "an equal" to the Datacomm model TS-5 but TM's descriptive literature submitted with its bid stated that instead of the battery status light, TM's model 517 provided a battery status meter and an on/off switch instead of a push-to-read button.

TM admits that its model 517 does not provide either the required battery status light or push-to-read button but contends that its bid is responsive because its model 517 offers equivalent substitutes that meet the intended purpose of the salient characteristics. TM states that the brand name identification

is intended to be descriptive, but not restrictive, and believes that the agency's interpretation of the salient characteristics is restrictive and exhibits a sole-source procurement objective.

We have frequently held that bids offering "equal" products must conform to the salient characteristics listed in the solicitation in order to be regarded as responsive. Casecraft, Inc., B-201065, July 20, 1981, 81-2 CPD 51; Sequoia Pacific Corp., B-199583, January 17, 1981, 81-1 CPD 13.

The contracting officer has set forth the following justifications for the two questioned salient characteristics. The push-to-read button ensures minimum expenditure of the battery during readings and because it is spring-loaded, it automatically returns to the off position. The on-off switch could be left on by the operator, thereby draining the battery. The battery status light automatically senses the battery status and indicates a low battery without further switching or adjustment by the operator, even during use of the meter by the operator.

While TM disagrees with the above and argues that its two features are equivalent to the salient characteristics, we find that Commerce has adequately justified its needs and rejection of TM's bid was proper.

The fact that the "brand name or equal" clause incorporated into the solicitation states that the brand name is intended to be descriptive does not support the contrary. The clause states:

"(a) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturing other than the one described by brand name) will be considered for award if such products are clearly identified in

the bids and are determined by the Government
to meet fully the salient characteristics
requirement listed in the invitation,"
(Emphasis added.)

Although the clause allows alternatives to the brand name unit, it also indicates that bids offering "equal" products must fully comply with the brand name features which are specified as salient characteristics.

Accordingly, the protest is denied.

Milton J. Rosler
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Comptroller General
of the United States