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DECISION



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

FILE: B-203235.5

DATE: April 26, 1982

MATTER OF: Bell & Howell Company

DIGEST:

1. In "brand name" or equal procurement, where the "sheet-fed" feature of brand name reader/printer is listed as salient characteristic, bidders need not provide the design approach of brand name reader/printer since this salient characteristic is only a general descriptive term requiring reader/printer to perform a certain function.
2. Protester, the party having the burden of substantiating its allegation, has failed to provide evidence showing that its reader/printer was the functional equivalent of the brand name reader/printer.

Bell & Howell Company (BHC) protests the determination that its bid under invitation for bids (IFB) No. NO0244-81-B-2251 issued by the Naval Supply Center, San Diego, California, was nonresponsive. The IFB was for quantities of microfiche reader/printers with related accessories and microfiche readers. BHC's bid was rejected as nonresponsive because the Navy determined that the product offered by BHC in response to the IFB's brand name or equal purchase description did not meet all of the salient characteristics of the brand name model specified in the IFB. BHC contends that its product met all of the invitation's requirements.

The protest is denied.

With regard to the microfiche reader/printers, the IFB called for bids to provide 55 microfiche reader/printers with related accessories described as "reader/printer, with turntable and dust cover, Canon Company series 370 Model No. M32-0043-000, or equal." The IFB listed three salient characteristics

that any reader/printer offered as equal would have to meet. One of the salient characteristics was that the reader/printers be "sheet-fed."

BHC admits that its reader/printer was not sheet-fed. Nevertheless, BHC asserts that the only respect in which it can actually be said that its product was nonresponsive was that the "roll-fed" reader/printer it offered did not meet the IFB's "performance standards." In this regard, BHC argues that while the IFB did specify sheet-fed reader/printers, the purpose behind the specification of these types of reader/printers was simply to ensure that a certain primary performance standard would be met, that is, to ensure that the reader/printers be capable of producing copies of microfiche regardless of the vertical or horizontal orientation of the data being copied. BHC further contends that the contracting officer's determination that only sheet-fed reader/printers could meet the vertical or horizontal orientation requirement was erroneous. According to BHC, roll paper reader/printers are also capable of orienting vertical and horizontal images. BHC alleges that roll paper reader/printers actually surpass sheet-fed reader/printers because roll-fed reader/printers can print vertically or horizontally more easily and conveniently than sheet-fed reader/printers which require removing and reorienting the sheet-fed universal paper cassette. Consequently, BHC takes the position that bids such as its own which offer products differing from the brand name products should not be rejected where the differences in design or construction are minor or where the differences are in features which do not affect the suitability of the products for their intended use.

It is well established that when a "brand name or equal" purchase description is used, bidders need not furnish an exact duplicate of the brand name product in detail or performance. 38 Comp. Gen. 291 (1958). Rather, the "equal" product offered must be substantially equivalent to the brand name product and must meet the salient characteristics of the brand name product specified in the solicitation. See Spectrum Leasing Corporation, B-195857, February 7, 1980, 80-1 CPD 104.

In Cohu, Inc., B-199551, March 18, 1981, 81-1 CPD 207, we stated:

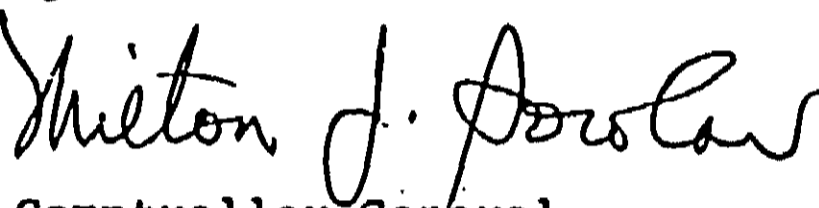
"When a specified salient characteristic is a precise performance feature such as operating ranges, speed, sensitivity, etc., the 'equal' product must meet that precise requirement. See, e.g., Bow Industries, Inc., B-196667, March 25, 1980, 80-1 CPD 219 (requirement for minimum of 96 percent effective cleaning of magnetic tape); A. A. Lasher, Inc., B-193932, March 14, 1979, 79-1 CPD 182 (specified temperature range). Similarly, when a design feature, such as a maximum size or weight is specified, the 'equal' product must also meet that requirement precisely. See Hutchison Brothers Excavating Co., Inc., B-197812, August 6, 1980, 80-2 CPD 93 (requirement to have 18-cubic yard capacity); Save-On Wholesale Products, B-194510, July 5, 1979, 79-2 CPD 9. On the other hand, when salient characteristics are stated in more general terms, the 'equal' product need not meet the characteristic exactly as the brand name product does; it need only be functionally equivalent to the brand name product in meeting that characteristic. 45 Comp. Gen., supra. * * *"

In our opinion, the IFB's sheet-fed requirement reasonably could be construed as a general descriptive term which required bidders to propose reader/printers with features functionally equivalent to Canon's 370 model but not necessarily ones which operate as Canon's.

The Navy has presented the following information as to why the roll-paper type equipment is not functionally equivalent to the sheet-fed salient characteristic. It is the Navy's position that the sheet-fed requirement was stated as a salient characteristic primarily because it can be used with a universal paper cassette so as to produce copies of fiche regardless of the orientation, vertical or horizontal, of the data and that the roll-paper type does not have this capability.

BHC, the party having the burden of substantiating its allegations, has simply not shown that the reader/printer it offered is functionally equivalent, that is, could orient images both horizontally and vertically. Other than state that it has several times sold roll-fed machines to the Navy for use in substantially similar applications as here, the only factual argument BHC makes in support of its position is the assertion that if the Navy had carefully reviewed the literature supplied with its bid, the Navy would have discovered that the model BHC offered "was capable of providing both vertical and horizontal orientation of images." BHC has not furnished this Office with any copies of the literature it submitted with its bid. Nor has BHC provided us with any technical facts or arguments which could establish that its roll-fed reader/printer did have the above-described image capability.

We deny BHC's protest.

for 
Comptroller General
of the United States