

DECISION

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

KIAZKIN

FILE: B-208607

DATE: February 14, 1983

MATTER OF: Business Equipment Center, Ltd.

DIGEST:

1. Where IFB contemplates single unit that can adapt machine to AC current and charge battery pack to required level of performance, offer of what is, in effect, adapter and independent charger is nonresponsive.
2. Where protest against amendment to IFB is initially filed with contracting agency prior to bid opening and no corrective action is taken, protest subsequently filed with GAO must be filed within 10 working days after bid opening to be timely.
3. In "brand name or equal" procurement, "equal" item need not meet unique features of brand name so long as salient characteristics listed in IFB are met.
4. Where heavy-duty rubber construction is not mandated by IFB salient characteristics, but is cited as example of type of construction needed for maximum wear and to prevent shock, "U.L. approved, heavy duty to prevent shock" meets IFB requirements.

Business Equipment Center, Ltd. (BEC), protests the award of a contract to Lanier Business Products, Inc. (Lanier), under invitation for bids (IFB) No. SSA-82-0131 issued by the Social Security Administration.

We sustain the protest in part, dismiss it in part, and deny it in part.

The IFB solicited bids on two groups of equipment. Group "A," as amended, called for a portable dictating machine, Sony BM-12 or equal, and specific accessories. Group "B" called for a combination dictating/transcribing machine, Sony BM-50C or equal, and specific accessories. Lanier was awarded the contract for groups "A" and "B" on the basis that it was the lowest responsive bidder for each group.

024619

BEC protests the award on several different grounds. We do not have to consider all the grounds for the protest against group "A," since we find that Lanier was not responsive to the IFB for group "A" in at least one respect, Cf. Sutron Corporation, B-205082, January 29, 1982, 82-1 CPD 69.

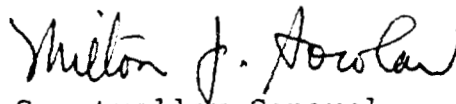
The IFB specifications included a requirement that the portable dictating machine operate at least 4 to 6 hours using nickel cadmium batteries on a full charge. The purchase description for the AC adapter/recharger required that this accessory be "compatible" with the dictating machine. The descriptive literature that Lanier furnished with its bid to show compliance with the IFB states that the Lanier "AC adapter/recharger will recharge the NiCad Battery pack only." The literature indicates that the average recording time on a NiCad battery pack charge is 2 hours. The literature indicates that there is an "AA" size NiCad alternative and that the average recording time operating with four rechargeable "AA" size NiCad batteries is 4 hours. According to the literature, the "AA" batteries are recharged in a Lanier battery charger.

From the IFB, it is apparent that what was required was an AC adapter/recharger that is capable of charging the battery pack so that the equipment is capable of operating at least 4 hours. From the Lanier literature furnished with the bid, it is apparent that the Lanier AC adapter/recharger is incapable of any more than a 2-hour charge on the battery pack compatible with the AC adapter/recharger. To obtain the required charge, it is necessary to resort to four "AA" NiCad batteries and an independent battery charger. Thus, while the IFB contemplated a single unit that can adapt the machine to AC current and charge the battery pack to the required level of performance, what Lanier offered, in effect, was an AC adapter and an independent charger. In other words, although the IFB required a sophisticated accessory that would perform dually and simultaneously as an AC power supply for the dictating machine and as a battery charger capable of providing a 4- to 6-hour charge, what Lanier offered were two accessories: one an AC adapter, the other a separate battery charger. If what the contracting agency actually wanted were two accessories, instead of one, for the performance, the competition might very well have been different if the IFB specified that. In our view, the Lanier bid on group "A" was nonresponsive and should have been rejected. However, since the equipment has been delivered, there is no effective relief that we can recommend. Lanier Business Products, B-205109, September 14, 1982, 82-2 CPD 223. However, we are advising the Secretary of Health and Human Services of our view.

BEC protests the group "B" procurement on three grounds. BEC protests that the amendment to the IFB to delete a stop-start mechanism for the group "B" equipment was improper. BEC contends that it protested the amendment to the contracting office prior to bid opening, but the amendment remained unchanged. Where a protest against alleged specification defects is initially filed with the contracting agency prior to bid opening, the opening of bids without corrective action constitutes initial adverse agency action which must be protested to our Office within 10 working days thereafter. Ferguson-Williams, Inc.; Mark Dunning Industries, Inc., B-208927, November 1, 1982, 82-2 CPD 394. In this case, the bid opening was June 9, 1982. The BEC protest was not received in our Office until August 12, 1982. Therefore, the protest against the amendment is dismissed as untimely.

BEC also protests that the Lanier product is not equal to the Sony product in quality, construction or electronic excellence. However, an item offered as an "equal" to a specified brand name in a "brand name or equal" procurement need not meet the unique features of the brand name so long as the salient characteristics listed in the IFB are met. Brand-Rex Company, Teltronics Division, B-187546, December 15, 1976, 76-2 CPD 498.

Finally, BEC protests that Lanier's connecting cords and plugs are not made of heavy-duty rubber as the salient characteristics in the IFB required. However, the salient characteristics merely stated that the cords and plugs should be "made of such construction as heavy duty rubber for maximum wear and prevention of shock hazard." Thus, heavy-duty rubber construction was not mandated, but was cited as an example of the type of construction needed for maximum wear and shock prevention. Lanier's descriptive literature for the combination machine specifies that the connecting cords and plugs are "U.L. approved, heavy duty to prevent shock." Under the circumstances, there is no basis to object to the determination of the contracting agency that Lanier met the cord and plug requirement. Polarad Electronics, Inc., B-204025, November 12, 1981, 81-2 CPD 401, and this aspect of the protest is denied.

for 
Comptroller General
of the United States