

DECISION



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

FILE: B-211370

DATE: May 10, 1983

MATTER OF: Northeast Contracting Associates, Inc.

DIGEST:

Even if contracting agency allegedly requested protester to submit, after bid opening, additional literature necessary to evaluate its bid, such request does not negate the descriptive literature clause, which requires rejection of bids not containing the literature at opening as nonresponsive.

Northeast Contracting Associates, Inc. (NCA), protests the rejection of its bid under solicitation No. DABT57-83-B-0018 issued by the Department of the Army, Fort Eustis, Virginia.

The protest is denied. We do so without obtaining a report from the contracting agency, since it is clear from the material NCA furnished that the protest is without legal merit. See 4 C.F.R. § 21.3(g) (1983).

The solicitation contains a descriptive literature clause which requires bidders to furnish descriptive literature as a part of the bid, before the time set for opening bids. The clause also specifies that the failure to furnish the literature by the time specified in the invitation will require rejection of the bid, unless the material qualifies for consideration under the late bid provisions.

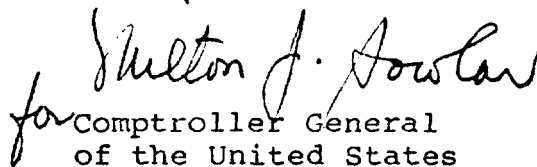
NCA asserts that it did not supply all of its descriptive literature by March 25, 1983, the bid opening date. Nevertheless, NCA alleges that on March 28, 1983, the contracting agency contacted and requested it to send the literature as soon as possible. NCA contends that the contracting agency's request for the literature after bid opening has the effect of nullifying the applicability of the descriptive literature clause. NCA believes that since it initially submitted specifications on the engine generator unit, the main item and, also, after opening, submitted the additional literature, the contracting agency cannot now reject the bid.

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We find the bid is nonresponsive, irrespective of the fact that the contracting agency allegedly requested NCA, after bid opening, to furnish the additional descriptive literature necessary to evaluate the bid. Since the clause advised bidders that the failure to include the necessary descriptive literature would require rejection of the bid, the bid NCA submitted without all of the necessary literature is nonresponsive. Delta Electronic Control Corporation, B-188796, November 28, 1977, 77-2 CPD 412.

Even if the contracting agency requested the additional literature after bid opening, the subsequent consideration of the literature would be improper, in light of the clause. To permit NCA to submit information relative to its bid after bid opening would confer an unfair competitive advantage upon NCA by permitting it to affect the responsiveness of its bid after bid opening. NCA would gain the choice of accepting or rejecting the contract after bids have been exposed by sending or not sending the additional information, which is necessary for the evaluation of its bid. The resulting adverse impact upon the integrity of the competitive procurement system, precludes the contracting agency from considering the additional information. CNC Company, B-208703, September 30, 1982, 82-2 CPD 303.

We summarily deny the protest.


for Comptroller General
of the United States