

DECISION

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

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FILE: B-208929**DATE:** June 21, 1983**MATTER OF:** Clearr Corp.**DIGEST:**

Bid proposing "equal" product in response to brand name or equal invitation was properly rejected as nonresponsive where descriptive information submitted or reasonably available is not sufficient to establish that the product bid meets all of the listed salient characteristics of brand name item.

Clearr Corp. protests the award of a contract to Potomac Industrial Trucks, Inc. under invitation for bids (IFB) DABT23-82-B-0075, issued by the U.S. Army for four forklift trucks to be used in a cold storage facility at Ft. Knox, Kentucky. Clearr's low bid was rejected as nonresponsive because the Army determined that the product bid by Clearr in response to the brand name or equal purchase description did not meet one of the salient characteristics of the brand name model specified in the IFB and it was unable to determine whether the product met another one of the specified salient characteristics. Clearr maintains that its product meets the invitation's requirements and thus that award to Potomac was improper.

The protest is denied.

The IFB called for bids to provide four forklift trucks described as "Model 30 RCTT Triple Stage, Manufactured by Crown Control Corporation or equal," and listed a number of salient characteristics that any product offered as equal would have to meet. The IFB warned that any bidder offering other than the specified brand name product must submit descriptive material to enable the contracting activity to determine whether the product offered met the listed salient characteristics. Among the salient characteristics listed in the IFB were requirements that the "Electrical System shall have 36 Volt, SCR Electronic Controls" and that the trucks be capable of operating at a temperature of 20 degrees below zero.

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Bids were opened on July 8 and Clearr was the apparent low bidder. Clearr offered its Model ESU-30 as an "equal" product. On August 2 the Army telephoned Clearr to ask it questions about the electrical system used in its product. The Army subsequently determined that the product bid by Clearr is not operated by SCR electronic controls. The Army further concluded that the descriptive literature submitted by Clearr did not establish that its product is capable of being operated at 20 degrees below zero. It therefore rejected Clearr's bid as nonresponsive.

Clearr contends that the control system for its product is fully equal to the brand name product even though it differs in design. It asserts that "SCR" is a "brand name" of the originator the General Electric Co. (GE), of a particular type of forklift system control, which was based on the use of a specific type of solid state device, silicon controlled rectifiers. Generically, Clearr says, the term "SCR" has come to describe the quality of forklift performance particular with respect to smoothness, safety and efficiency of its controls, rather than to a specific unit manufactured by GE. The control system used in Clearr's forklift differs from that in other products offered because the Clearr forklift is fully hydraulically driven, while others use a number of separate electric motors. According to Clearr, its electrical system is solid state and the forklift equals the brand name product in its quality of performance. Clearr has also submitted evidence rebutting an Army contention that its forklift is less energy efficient than is the brand name product.

We view Clearr's bid as nonresponsive because it failed to include sufficient descriptive material to support a determination that the salient characteristics would be met. To be responsive to a brand name or equal solicitation, a bid offering an alternative product must contain sufficient descriptive material to permit the contracting activity to assess whether the alternative possesses each salient characteristic of the brand name product to an equal or greater degree. It is not enough that the bidder believes his product is equal, or makes a blanket statement that all salient characteristics are met. Rather, we have held that the responsiveness of an "equal" bid depends upon the completeness of the information submitted or reasonably available. Cummins-Wagner Co., Inc., Joy Manufacturing Co., B-188486, June 29, 1977, 77-1 CPD 462; Ocean Applied Research Corporation, B-186476, November 9, 1976, 76-2 CPD 393; Sutron Corporation, B-205082, January 29, 1982, 82-1 CPD 69.

Salient characteristics may be definitive, specifying a precise performance value or specific design characteristic, or generic, in which case the information furnished with a bid must be sufficient to establish that the "equal" product is functionally equivalent to the brand name product. Cohu, Inc., B-199551, March 18, 1981, 81-1 CPD 207. Clearr treats the requirement for SCR control as a generic characteristic. However, it failed to provide with its bid the detailed performance data which would permit a determination that the quality of control offered would equal that of the brand name product. Clearr merely submitted standard commercial literature which, although it identifies the system as hydraulic, and the controls as actuating hydraulic spool valves, provides no basis for evaluating the quality of control its system will deliver.

Moreover, the descriptive literature submitted by Clearr with its bid does not include any information which would indicate that its product is capable of performing in temperatures of 20 degrees below zero. Clearr may in fact be able to furnish a product which is capable of such performance, but since the descriptive literature submitted with its bid does not indicate this feature, its bid was properly rejected as nonresponsive on this basis alone. See Sprague & Henwood, Inc., B-201028, April 6, 1981, 81-1 CPD 260.

Finally, Clearr's misunderstanding of the basis on which the agency was required to evaluate its bid is reflected in its further contention that if the contracting officer did not understand whether its product would operate in temperature 20 degrees below zero, she should have asked Clearr about it when she telephoned about its electrical system. In fact the contracting officer acted questionably by telephoning Clearr after bid opening for additional information. To allow a bidder to provide additional information after bid opening to make responsive a bid which was nonresponsive for inadequate or non-conforming descriptive literature would be tantamount to permitting the improper submission of a new bid. International Medical Industries, Inc., B-196432.4, January 19, 1981, 81-1 CPD 28.

The protest is denied.

for *Milton J. Fowler*
Comptroller General
of the United States