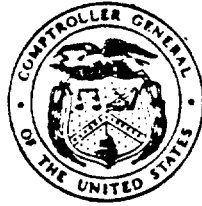


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DECISION



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

FILE: B-211733

DATE: October 11, 1983

MATTER OF: Professional Material Handling Company

DIGEST:

Bid was properly rejected as nonresponsive to brand name or equal solicitation where the protester failed to show that the contracting agency erroneously or arbitrarily determined that descriptive material submitted with the bid, previously submitted information, or information otherwise reasonably available to the contracting agency did not substantiate compliance with salient characteristics. The contracting officer had no obligation to seek clarification from the bidder after bid opening nor to research general trade publications not cited in the bid nor otherwise apparently relevant in the hopes of finding information on the product offered as an equivalent.

Professional Material Handling Company protests the award of a contract to the Raymond Corporation to supply a forklift truck under invitation for bids IRS-NA-83-21, issued by the Internal Revenue Service. Professional Material Handling contends that the IRS improperly rejected its bid as nonresponsive. We deny the protest.

The solicitation sought bids on the furnishing and delivery of one Raymond Model 35, Sit-Down, Swing Reach Truck or equal, complete with battery and charger, and the furnishing and installation of a Ray-Guide, or equal, wire guidance system compatible with the truck offered. The specifications included lists of the salient characteristics of the truck and wire guidance system which had to be met by a bidder offering products "equal" to the brand name items.

The IFB included a clause requiring bidders to furnish descriptive literature as part of their bids, the purpose of which was to establish in detail the design, materials, components, construction and operation of the products

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offered. The clause warned that failure to provide the literature would result in bid rejection. The IFB also contained a "brand name or equal" clause informing bidders that the evaluation of bids and the determination as to the equality of the products offered would be based on "information furnished by the bidder or identified in his bid as well as other information reasonably available to the purchasing activity."

Bids were submitted by six firms. Professional Material Handling offered to supply a modified Steinbock Depotlift truck, model number EFL-1.5, and to install a Portec Logisticon wire guidance system, the Pathfinder model, for \$60,451. Raymond offered to supply the Raymond Model 35 Swing Reach Truck and to install a Ray-Guide Wire guidance system for \$83,955.

The IRS awarded the contract to Raymond after the IRS determined that the bid of Professional Material Handling, among others, was nonresponsive. The agency concluded that Professional Material Handling's bid was nonresponsive because the descriptive literature on the Steinbock truck returned in the bid package contained the preprinted statement "subject to change without notice," and because the bid also failed to include any data or descriptive literature showing that the Pathfinder model of the Portec Logisticon wire guidance system satisfied the salient characteristics listed in the solicitation.

Professional Material Handling maintains that its bid was responsive, arguing that the "subject to change without notice" statement is commonly included by manufacturers in their advertising brochures and that, in any case, it had stated in a cover letter included in the bid package that it would comply with the required specifications. In the cover letter, Professional Material Handling detailed how it would satisfy some, but not all, of the salient characteristics of the Raymond truck as set forth in the specifications. In addition, the cover letter included the statement that "[a]ll other specifications will be as required in" the section of the solicitation where the salient characteristics of the forklift were listed.

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A bid is responsive if it constitutes an unequivocal offer to provide the items requested in total conformance with the specifications. HSQ Technology, B-208557, December 21, 1982, 82-2 CPD 560. Where descriptive literature has been required by a solicitation, our Office has held that statements in such literature submitted by the bidder to the effect that specifications are subject to change provide a bidder with an option to deviate from the advertised requirements after award and are thus a material deviation rendering the bid nonresponsive. We have also held that a blanket offer to comply with the specifications does not cure this deviation. See IFR, Inc., B-203391.4, April 1, 1982, 82-1 CPD 292; Big Joe Manufacturing Company, B-182063, November 14, 1974, 74-2 CPD 263.

Even apart from the effects of the reservation, however, Professional Material Handling's bid was rendered nonresponsive by the failure to demonstrate that the Pathfinder model of the Portec Logisticon wire guidance system offered by Professional Material Handling satisfied all the salient characteristics of the Ray-Guide wire guidance system as set forth in the solicitation. Professional Material Handling failed to include in its bid package any descriptive literature on the Pathfinder. Nor did its bid package reference any reasonably available descriptive literature.

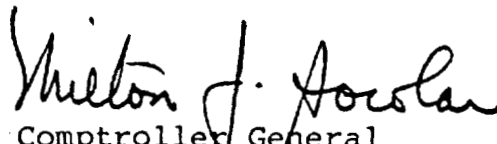
Professional Material Handling contends that additional information on the Logisticon was available to the contracting officer in the Thomas Register, a privately published directory of American manufacturers. The protester further states that, during the period after bid opening and before award, the contracting officer failed to ask the protester for more information on the Logisticon system. These arguments reflect a misunderstanding of the role and obligations of the contracting officer and the bidder. The responsiveness of an "equal" bid in a brand name or equal procurement depends upon the completeness and sufficiency of the descriptive material submitted with the bid, previously submitted information, or information otherwise reasonably available to the contracting agency. See Particle Data, Inc., B-209419, February 14, 1983, 83-1 CPD 154. Only material or information available at bid opening may be considered by the contracting

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officer when determining the responsiveness of the bid. See Fire & Technical Equipment Corp., B-192408, August 4, 1978, 78-2 CPD 91. The contracting officer has no obligation to seek clarification from the bidder after bid opening or to make any other unreasonable effort to obtain descriptive data before finding the bid nonresponsive. See Environmental Conditioners, Inc., B-188633, August 31, 1977, 77-2 CPD 166. The protester bears the burden of proving its case and of showing that the agency's determination that its bid was nonresponsive was erroneous or arbitrary. See Rack Engineering Company, B-208554, March 7, 1983, 83-1 CPD 224; HSQ Technology, *supra*.

Professional Material Handling has failed to show that the contracting officer's determination that its bid was nonresponsive as to the wire guidance system was erroneous or arbitrary. It has not shown that information reasonably available to the contracting officer demonstrated equivalency of the Pathfinder. The contracting officer had no obligation to contact Professional Material Handling for further information on the Portec Logisticon wire guidance system. As for the Thomas Register, we do not believe that contracting officials are required to research general trade publications not cited in the bid nor otherwise apparently relevant in the hopes of finding information on the characteristics of products offered as equal to the brand name product in order to establish their equivalency. In any case, Professional Material Handling has failed to show that information available in the Thomas Register would have demonstrated that the Logisticon system satisfied all of the salient characteristics as set out in the solicitation.

The protest is denied.

for 
Comptroller General
of the United States