



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Display Sciences, Inc.

File: B-222425

Date: July 9, 1986

DIGEST

Protester is not an "interested party" to object to the cancellation of a solicitation where the protester would not have received award if the solicitation had not been canceled since its bid was nonresponsive to a material requirement.

DECISION

Display Sciences, Incorporated (Display Sciences), protests the cancellation of invitation for bids (IFB) No. DAHA90-86-B-0001 issued December 30, 1985, for the procurement of 276 video cassette projectors.

The protest is dismissed.

The IFB for the procurement of the video cassette projectors was issued on a brand name or equal basis and specified "Display Sciences, Inc. Model No. AV50S or Equal." The list of salient characteristics of the brand name model which was required by the agency was set forth on pages 37 and 38 of the solicitation. One of the salient characteristics required that the "picture size" be "25" to 70" diagonal (adjustable focus)."

A total of seven bids were received at bid opening on February 12, 1986. Four bidders, including Display Sciences, offered the brand name item, Display Sciences Model No. AV50S, and three bidders offered a projector system which incorporated the "SONY FP-60" "Vidimagic" video projector. One of the four bidders who offered the brand name item also offered at a lower bid price as alternate items several systems based on the SONY projector.

Display Sciences submitted with its bid unsolicited descriptive literature on its model AV50S projector. This literature provides, in pertinent part, that the picture size focus was "adjustable from 25" to 66" measured diagonally. Based on his review of the unsolicited descriptive literature submitted by Display Sciences with its bid, the

contracting officer determined that cancellation of the solicitation was proper since the brand name item apparently did not meet the salient characteristic set forth in the solicitation for picture size. The contracting officer advises that on March 4, 1986, he mailed out notices to bidders that the solicitation had been canceled because of defective specifications. Specifically, the notice advised that unsolicited literature furnished by the manufacturer of the brand name product indicated that such product did not meet the salient characteristic with regard to picture size. We note that the contracting officer further advises that the solicitation was also deficient in that the salient characteristics for minimum audio output and for viewing screen size were "ambiguous." Furthermore, the contracting officer advises that the solicitation on a brand name or equal basis was overly restrictive since he believes that the video cassette projectors should have been obtained on the basis of detailed "generic" specifications and he states that based on the bids submitted he was concerned about "price reasonableness."

Display Sciences has objected to the cancellation of the solicitation on the basis that prior to cancellation it offered to provide the contracting officer with evidence which it asserts would establish that the picture size of its brand name projector in fact has an adjustable focus of from 25" to 72". The protester states that a sworn statement by its president and a prior brochure on the Display Sciences Model AV50S which were presented to the contracting officer after bid opening on March 5 clearly establish that the Model AV50S was fully capable of projecting the required 70" picture (both the statement and the brochure provide that model AV50S has a picture size which is adjustable from 25" to 72" measured diagonally). The protester advises that it also provided a list of nine companies which use Display Sciences Model AV50S for a picture size of up to 72" so that the contracting officer could independently determine the capability of the brand name projector with regard to picture size. The protester asserts that the solicitation should not have been canceled, but that award should have been made to either itself or one of the other bidders who offered Display Sciences Model AV50S because such model does, in fact, meet the solicitation's salient characteristic for a picture size adjustable up to 70" measured diagonally.

We need not consider the propriety of the cancellation because we conclude that Display Sciences is not an interested party under our Bid Protest Regulations to raise this issue.

Neither Display Sciences nor the agency asserts that the minimum needs of the government would have been satisfied by a picture size adjustable up to 66" rather than the required 70". Although the agency states that the solicitation appears to have been defective in that the specified brand name item appears to have been incapable of meeting the solicitation's salient characteristic for picture size, it does not indicate that the picture size of 66" offered by Display Sciences in its bid could meet its

actual minimum needs. To the extent that the contracting officer views the solicitation as unduly restrictive, he states that it is because the solicitation was issued on a brand name or equal basis rather than on the basis of detailed "generic" specifications. In addition, the thrust of the protester's contention is not that an adjustable picture size of 66" will, in fact, meet the agency's needs, but that its product, model AV50S, does, in fact, meet the solicitation's requirements for picture size since the projector focus is adjustable up to 72". Under the circumstances, it appears that even if the solicitation had not been canceled Display Sciences would not have been entitled to award since its bid would have been properly for rejection as nonresponsive.

A bid is responsive only if it is an unequivocal offer to meet all of the material terms and conditions of the IFB. Data Control/North Inc., B-205726, June 21, 1982, 82-1 C.P.D. ¶ 610. Where unsolicited descriptive literature contains the same model number or name as the equipment offered in the bid, there is a sufficient relationship between the bid and the descriptive literature so that the literature may not be disregarded. LogE/Spatial Data Systems, Inc., B-205016, May 17, 1982, 82-1 C.P.D. ¶ 465. Thus, if the literature describes a product that does not conform to a material requirement of the IFB the effect of the literature renders the bid nonresponsive by qualifying the otherwise responsive bid. Minnesota Mining and Manufacturing Co., B-212004, Nov. 17, 1983, 83-2 C.P.D. ¶ 578 and Devault Manufacturing Co., B-195959, Jan. 7, 1980, 80-1 C.P.D. ¶ 18.

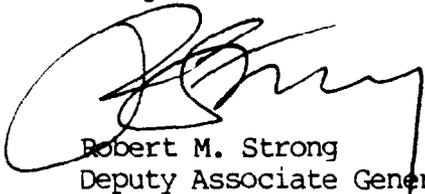
Here, as a result of the unsolicited descriptive literature on the model AV50S, showing a picture size adjustable up to 66", which Display Sciences submitted with its bid, the protester's bid was nonresponsive to the solicitation's requirement for a picture size adjustable up to 70". Upon acceptance of its bid by the government, Display Sciences would be bound only to the terms of its bid, as qualified by the unsolicited descriptive literature. See id. at 3. Thus, even if the contracting officer had determined that cancellation of the solicitation was improper because the brand name projector, in fact, meets the solicitation's requirement for a 70" picture size, Display Sciences would have been ineligible for award since in its bid it qualified its obligation to provide a projector with a picture size of up to 70". Accordingly, its bid was properly for rejection as nonresponsive. Although the protester may have sought to explain after bid opening that it was offering a projector which had a picture size which was adjustable up to 72" it is well settled that a bidder may not explain the meaning of an apparently nonresponsive bid after bid opening. Id. at 2-3, and L.H. Morris, Electric Inc., B-219732, 85-2 C.P.D. ¶ 392.

Under the circumstances, it does not appear that Display Sciences is an interested party to the cancellation of the solicitation since it would not have received award if the solicitation had not been canceled. See 4 C.F.R. § 21.1(a) (1986) and Beckman Instruments Inc., B-220794; B-220795, Feb. 20, 1986, 86-1 C.P.D. ¶ 178 at 5. We note that it appears

that at least one of the bidders which offered the Display Sciences Model AV50S projector submitted a bid which was responsive to the terms of the solicitation since that bid was unambiguous and did not take any exception to the material terms of the solicitation. However, none of the bidders other than the protester, offering the brand name item has protested the cancellation of the solicitation and Display Sciences' status as a supplier to such bidders does not make it an "interested party" for the purpose of protesting the cancellation action. See N.F. Electronic Instruments, B-219661.2, Feb. 14, 1986, 86-1 C.P.D. ¶ 161. Accordingly, the protest filed by Display Sciences is dismissed.

Display Sciences requests its bid preparation costs and the costs of filing and pursuing its protest. In view of our decision dismissing the protest of the cancellation of the solicitation such claims are denied. Norfolk Shipbuilding and Drydock Corp., B-219988.3, Dec. 16, 1985, 85-2 C.P.D. ¶ 667 and DSP Technology Inc., B-220593, Jan. 28, 1986, 86-1 C.P.D. ¶ 96.

The protest is dismissed.



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