



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: NJCT Corporation

File: B-224246

Date: February 13, 1987

### DIGEST

1. Where solicitation requires descriptive literature, bidder's failure to submit descriptive literature with its bid renders the bid nonresponsive.
2. Where agency makes award to bidder who submits descriptive literature with its bid, which did not conform to the specifications, but includes general statement that product will be modified to meet the specifications, bid must be rejected as nonresponsive because the descriptive literature did not contain enough information for the agency to determine that the bidder's product complies with the specifications.

### DECISION

NJCT Corporation (NJCT) protests the rejection of its bid as nonresponsive under invitation for bids No. 620-28-86, issued by the Chief, Supply Service, Veterans Administration Hospital (VA), Montrose, New York, for 26 tray delivery carts. NJCT's bid was rejected because it failed to furnish descriptive literature with its bid as required by the IFB.

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

The IFB provided that descriptive literature was required to establish details of the product that the bidder intended to furnish to meet the specifications with respect to design, materials, components and performance characteristics in order to determine the technical acceptability of the product. Bidders also were advised that the failure to submit descriptive literature with the bid would require rejection of the bid. At the September 26, 1986, bid opening, the VA received 12 bids. The low bidder was rejected as nonresponsive and NJCT, which was second low, was rejected as nonresponsive because it did not furnish descriptive

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literature with its bid. The VA made award to the third low bidder, Gill Marketing Co. (GMC).

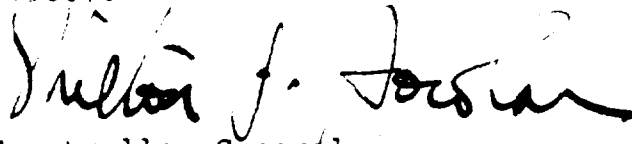
NJCT alleges that the specifications describe a "Carter Hoffman" tray and that it offered to furnish Carter Hoffman trays by inserting a Carter Hoffman model number, which will fully meet the specifications. However, this was not a brand name or equal procurement and the VA advises that no model of Carter Hoffman trays meets the specifications without substantial modification. We have held that where an invitation advises bidders that descriptive literature is needed for bid evaluation and must be furnished before bid opening or the bid will be rejected, a bid submitted without the necessary descriptive material is nonresponsive and must be rejected. Miller Spreader Company, B-215467, July 23, 1984, 84-2 C.P.D. ¶ 89. Since NJCT did not furnish descriptive literature with its bid, we find that the VA properly rejected the bid as nonresponsive.

NJCT also protests that GMC's bid should have been rejected as nonresponsive because its descriptive literature did not show compliance with the specifications and because it did not acknowledge an allegedly material amendment to the IFB. Although a nonresponsive bidder, in many cases, is not an interested party eligible to protest as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1986), we have held that a protester whose bid is viewed as nonresponsive should have the opportunity to have its complaint heard when the complaint is that a competitor's bid should have been viewed as nonresponsive for the same reason. See Raymond Corporation, B-224577, Jan. 8, 1987, 87-1 C.P.D. ¶ \_\_\_\_. Since NJCT is arguing that GMC's descriptive literature also was defective, we find that it is appropriate to consider the merits of this protest.

GMC furnished descriptive literature describing a product that, in our opinion, did not meet the specifications in several material respects, including the size and gauge of stainless steel to be used. On its bid, GMC noted that the product quoted would be modified to meet the specifications and that shop drawings would be furnished after award of the contract. We find that this was insufficient to enable the agency to determine whether the product GMC intended to furnish would meet the specifications. If a bidder submits literature with its bid describing a product that it intends to modify to meet the specifications, it cannot merely state that it intends to modify its product to meet the specifications where the agency specifically lists precise performance or design features, as here. See Waugh Controls Corporation,

B-216236, Apr. 18, 1985, 85-1 C.P.D. ¶ 441. The bidder is required to show how its proposed modification will meet the requirements in the specifications. Id. Since GMC only wrote that its product would be modified, we find its descriptive literature did not provide sufficient detail for the VA to determine whether its product met the specifications and the VA also should have rejected GMC's bid as nonresponsive. Mahon Inc., B-216791, Nov. 13, 1984, 84-2 C.P.D. ¶ 524. Therefore, we sustain this aspect of NJCT's protest and we need not discuss whether GMC's bid was nonresponsive for not acknowledging an alleged material amendment.

In view of the above, we recommend that the VA terminate the award to GMC and award to the next low responsive bidder. If none of the remaining bids are acceptable, the requirement should be resolicited. NJCT is not entitled to its costs of pursuing the protest since such costs are awarded only to a bidder who was unreasonably excluded from the competition. NJCT's bid was properly rejected as nonresponsive and therefore, it was not unreasonably excluded. 4 C.F.R. § 21.6(e) (1986).

*for*   
Comptroller General  
of the United States