



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ATD-American Company

File: B-227134

Date: July 17, 1987

DIGEST

Where a solicitation for bed pads required samples to be submitted with bids which conform to the size requirements listed in the solicitation, protester's bid was properly rejected as nonresponsive where bid sample did not conform to the listed specifications.

DECISION

ATD-American Company protests the rejection of its low bid as nonresponsive and the award of a contract to Hosposable Products, Inc., for item 3 under invitation for bids (IFB) No. M1-48-87, issued by the Veterans Administration (VA) for bed pads.

We deny the protest.

The IFB solicited bids for three-line items type I bed pads and type II bed pads (sizes 1 and 2). The IFB provided that bid samples were required to be submitted as part of the bids, must be received by the time specified for receipt of bids, and would be evaluated to determine compliance with the salient characteristics listed in the "commercial item description" section of the solicitation. In addition, the bid samples provision of the IFB warned that failure to furnish samples on time or failure of the samples to conform to the required characteristics "will require rejection of the bid."

By letter dated May 15, 1987, the VA notified ATD that ATD's bid on item 3 (type I bed pads) was rejected as nonresponsive due to ATD's failure to submit bid samples on item 3 as required by the IFB. However, after ATD filed this protest, VA learned that ATD's samples were in fact timely received and evaluated but the samples were not originally associated with ATD's bid because they were submitted only under the name Stanford Products, a warehousing company of ATD's

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supplier. Although VA admits that it timely received and tested the Stanford/ATD sample, VA argues that ATD's bid is nonresponsive in any case because the size of the sample it submitted did not conform to the size requirements stated in the solicitation's commercial item description. ATD's sample measured 17 by 24 inches, whereas the solicitation required the item to be 23 by 24 inches, plus or minus 1/2 inch. ATD's sample was therefore approximately 6 inches, or 25 percent, too short in one dimension.

ATD admits that its sample did not meet the IFB's size requirements but argues that bid samples must only show characteristics which "cannot adequately be described by specification or purchase descriptions," citing the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-20 (1986). ATD contends that its sample was submitted to show its products' material and workmanship and not to qualify its bid in terms of its products' size. Finally, citing our decision in ATD-American Co., 63 Comp. Gen. 549 (1984), 84-2 C.P.D. ¶ 229, ATD argues that the solicitation did not specifically reference size as a requirement for the samples and it was therefore improper to reject its bid due to its sample's size. We disagree.

ATD is correct in stating that where a solicitation's bid sample provision does not state the characteristics that the sample must meet, it would be improper to reject the bid unless it is clear from the sample that the bidder intended to qualify the bid by taking exception to the specifications. ATD-American Co., 63 Comp. Gen. 549, supra. However, where a solicitation lists definitive specifications and requires that bid samples strictly comply with those specifications, a sample that does not so comply renders a bid nonresponsive. Easton Box Co., B-213423, Apr. 10, 1984, 84-1 C.P.D. ¶ 406. The failure of a bid with bid samples to meet stated salient characteristics is, therefore, a proper ground for bid rejection and it is improper for an agency to waive such a requirement. Elwyn Institutes, B-211000, Aug. 2, 1983, 83-2 C.P.D. ¶ 158. Furthermore, we have rejected arguments that alleged minor deviations from bid samples requirements can be waived for correction in production. See Cathey Enterprises, Inc., B-194334, June 13, 1979, 79-1 C.P.D. ¶ 418; Airways Industries, Inc. et al., B-190093, Aug. 14, 1978, 78-2 C.P.D. ¶ 115.

Here, contrary to ATD's assertion, the IFB's commercial item description clearly stated that type I bed pads must be of specific dimensions and within the stated size tolerance. In addition, the IFB's bid samples clause warned that the failure of samples to conform to the required characteristics stated in the commercial item description "will require

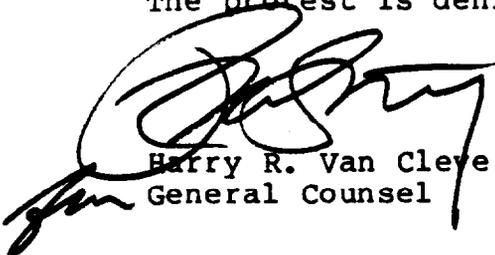
rejection of the bid." Since ATD's bid sample admittedly did not conform to the size specifications, ATD did not unequivocally offer to provide the items requested in total conformance with the specifications, and therefore its bid was nonresponsive. Easton Box Co., B-213423, supra.

Although VA acknowledges that the reason initially given to ATD for the rejection of ATD's bid ultimately was shown to have been improper, VA correctly determined that the Stanford/ATD bid sample was unacceptable. Therefore, the rejection of ATD's bid was proper in any case. See TEAM Corp., B-218584, June 27, 1985, 85-1 C.P.D. ¶ 734.

Finally, ATD contends that bid samples must only show characteristics which "cannot adequately be described by specifications or purchase descriptions" and therefore size, which can easily be specified, should not be an element for which samples are examined or tested. We disagree.

While FAR, 48 C.F.R. § 14.202-4(b)(1), states that samples should not be required of bidders "unless there are characteristics of the products that cannot be described adequately in the specification or purchase description," section (b)(3) provides that once bid samples are determined to be necessary, the "samples may be examined for any required characteristic, whether or not such characteristic is adequately described in the specification," as long as the required characteristic is listed as one for which the samples will be examined. FAR, 48 C.F.R. §§ 14.202-4(b)(3) and (e)(2). Since the IFB listed size of the bed pads as a characteristic for which the samples will be examined, size became a material characteristic against which the samples should properly have been evaluated. Easton Box Co., B-213423, supra.

The protest is denied.



Harry R. Van Cleave
General Counsel