

Richard P.



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: EFCOM Communication Systems

File: B-227975

Date: August 7, 1987

DIGEST

A bid offering an "equal" product under a brand name or equal solicitation must contain sufficient descriptive information to permit the contracting officer to determine that the product possesses the salient characteristics specified in the solicitation. A bid which does not identify any specific alternate product and which merely represents generally that all salient characteristics will be met or exceeded may be properly rejected as nonresponsive.

DECISION

EFCOM Communication Systems protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. N00197-87-B-0042, issued by the Naval Ordnance Station, Louisville, Kentucky. We dismiss the protest under 4 C.F.R. § 21.3(f) (1987), as it is clear on its face that it is without legal merit.

The solicitation called for the submission of unit prices on a brand name or equal basis for the Dukane Corporation Model N15F210B/S Sonar Transmitter, and contained the Brand Name or Equal clause prescribed by the Department of Defense Federal Acquisition Regulation Supplement (DFARS), 48 C.F.R. § 252.210-7000 (1985). This provision permits bidding on an "equal" product, but a bidder must identify the alternate brand name in the IFB and furnish information to permit the government to determine whether the product meets the salient characteristics.

The protester submitted a timely bid along with a cover letter stating that "[w]e feel confident that we can provide your organization with a quality product which will meet or exceed the required specifications . . ." and a copy of the protester's commercial products catalogue. The protester's bid included no specifications regarding its offered "equal"

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product and did not specify a model number from its commercial catalogue. Additionally, the protester in a letter dated June 24, 1987, responding to a post-bid opening telephone inquiry from the contracting officer^{1/} stated:

". . . EFCOM will supply a product meeting the specifications and will submit detailed technical data to the Contracting officer . . . evidencing design and processes to build the products to assure specification compliance and 'equality'."

The contracting officer rejected EFCOM's bid as nonresponsive, and this protest followed.

The protester argues that its bid was responsive, based upon statements made both in its bid and its letter of June 24, that it would supply an equal product which would meet or exceed the government's specifications and that it would supply detailed information as to design and production technique after bid opening. According to the protester this information was improperly refused by the contracting officer; it has cited DFARS, 48 C.F.R. § 252.210-7000, in support of this proposition.

The protester did not identify what it was offering or demonstrate in any way the equality of its product to the brand name and thus its bid properly was rejected as nonresponsive. Consolidated Bell, Inc.--Reconsideration, B-220421.2, Mar. 21, 1986, 86-1 CPD ¶ 280. To be responsive to a brand name or equal solicitation, a bid offering an allegedly equal product must contain sufficient descriptive material to permit the contracting officer to assess whether the offered alternative possesses the salient characteristics specified in the solicitation. Interand Corp., B-224512.2, Dec. 31, 1986, 66 Comp. Gen. ___, 87-1 CPD ¶ 5. If, as here, the descriptive literature or other information reasonably available to the agency does not show compliance with all the salient characteristics, the bid must be rejected. Id. Moreover, EFCOM's blanket offer merely to meet the specifications does not satisfy this requirement; there must be some showing that the equal product, in fact, meets the salient characteristics. Rocky Mountain Trading Co., B-221060, Jan. 24, 1986, 86-1 CPD ¶ 88. Although EFCOM stated in a letter submitted after bid opening, and now

^{1/} It appears that the contracting officer made this inquiry because he was uncertain as to whether EFCOM was offering a brand-name or equal product. EFCOM's letter of June 24, makes clear that this was a typographical omission and that, in fact, EFCOM was offering an "equal" product.

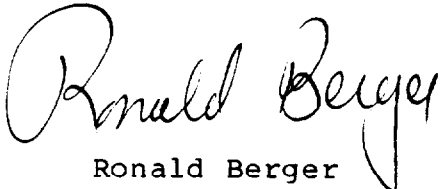
asserts, that it can and will meet the salient characteristics, its bid did not demonstrate this and thus was non-responsive. Responsiveness cannot be determined by resort to explanations furnished after bid opening. Dakota Woodworks, B-220806, Oct. 29, 1985, 85-2 CPD ¶ 486.

EFCOM contends that the language of DFARS, 48 C.F.R. § 252.210-7000, allows the contracting officer to consider information supplied by the bidder after bid opening. We disagree. The applicable DFARS provision states that:

" . . . to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material . . . necessary for the purchasing activity to . . . determine whether the product offered meets the salient characteristics requirement" (Emphasis supplied.) DFARS, 48 C.F.R. § 252.210-7000(c)(1).

Thus the contracting officer properly rejected EFCOM's bid as nonresponsive since EFCOM failed in its bid to indicate a model number for the item solicited or to include descriptive data.

The protest is dismissed.



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