



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tucker Electronics Co.

File: B-227913

Date: October 2, 1987

DIGEST

Agency had reasonable basis to reject protester's proposal as technically unacceptable where in response to solicitation contemplating the supply of newly manufactured items, protester who intended to furnish used, reconditioned material failed to submit with its proposal information and supporting data required by the solicitation for determining the acceptability of the protester's material.

DECISION

Tucker Electronics Company protests the rejection of its proposal under request for proposals (RFP) No. F41608-87-R-C448, issued by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas, for the purchase of 11 differential voltmeters for use in aircraft maintenance. Tucker alleges that it was "illegally disqualified" from the competition because it "did not submit a particular form," which government employees were unable to provide or identify.

We deny the protest.

This solicitation, which was synopsisized in the Commerce Business Daily (CBD), set the closing date for receipt of proposals as June 5, 1987. Two proposals were submitted-- one from Tucker, in response to the CBD synopsis, and one from John Fluke Manufacturing Company, the only approved source.

Tucker submitted its proposal on May 29 but made entries only on four pages of the 21-page solicitation. The only information supplied by Tucker was its price, proposed delivery schedule and its place of inspection and acceptance. Tucker completed none of the remaining pages of the solicitation and thus failed to provide all required information in submitting its proposal.

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The Air Force apparently opened Tucker's proposal immediately upon its receipt a week before the due date at which time, according to a memorandum for the file, an Air Force buyer called Tucker to inquire whether the firm was "quoting new material, used reconditioned material, new surplus, an alternate item or as a distributor for [Fluke]." Tucker responded that it was offering used, reconditioned material. The Air Force buyer states that he then made Tucker "aware of a data certification that it must provide by the [closing date for receipt of proposals which certification is required] when a contractor quotes other than newly manufactured items. Completed Reqs & Certs [Representations and Certifications] were also indicated as required."

Tucker states in its comments on the report that although in the course of this conversation the Air Force buyer "[told] us that we were lacking a certain certification," he did not refer to any specific solicitation provisions dealing with used or reconditioned materials. Tucker states that it then attempted to determine what "form" it needed to provide but was unable to do so because government employees could not identify one in response to its inquiries. By its own account then "confused," Tucker "promptly left it at that point with no follow-up." As of the June 5 closing date for receipt of proposals, no further response was received from Tucker and the Air Force subsequently rejected Tucker's proposal as technically unacceptable. Tucker protested to our Office upon being notified of the rejection of its proposal.

Tucker attributes its failure to provide information the Air Force deemed essential to the evaluation of its proposal to the firm's being "sent after a mythical form that didn't exist." The protester argues that in view of its lower price its proposal should be considered for award or that the procurement should be resolicited.

For reasons which it has not explained, Tucker submitted a proposal lacking most of the information, representations and certifications requested by the solicitation. Among the items of information missing was what Tucker intended to furnish the government in fulfilling the contract should one be awarded to it. Since Tucker was not the approved source for this item, the Air Force buyer made telephonic inquiry and was told by Tucker that it intended to supply used, reconditioned items. The buyer advised Tucker that if it intended to offer other than newly manufactured items it needed to complete "a data certification" and that it also needed to complete the representations and certifications contained in the RFP. Allegedly uncertain as to how to proceed, Tucker did neither, as a result of which its proposal was subsequently rejected.

The certification to which the buyer apparently referred appears in section K-501 of the RFP, "Previously Manufactured Material." This provision advised offerors that the RFP contemplated the furnishing of newly manufactured items, and that in the event an offeror intended to furnish "new, unused, previously manufactured" items it must so notify the contracting officer 10 days before initial proposals were due so that the contracting officer could consider amending the RFP to include provisions for the purchase of previously manufactured material. Concurrently, an offeror of previously manufactured material which was former government surplus or items which were acquired as residual inventory from a terminated government contract was to provide a certification--the text of which is set out in section K-501--as to the origin of the items it intended to furnish, their packaging, whether the offeror had in its possession drawings or specifications to the item and whether the offeror would respond to the RFP should any required first article testing destroy or render unserviceable the item tested. As part of this certification, the offeror was to state:

"This material is new, unused, meets applicable specifications, and is offered without rework or refurbishment of any kind. The undersigned further certifies that no changes have been made to the materials being offered."

In its report to our Office, the Air Force justifies its rejection of Tucker's offer, in part, on the failure of the firm, as an offeror of previously manufactured material, to provide the notice and certification required by section K-501. Strictly speaking, that provision would not apply to Tucker's offer, since the provision is directed to an offer of new, unused but previously manufactured material, and not to an offer such as Tucker's based on the supply of used, reconditioned items. As indicated by that portion of the required certificate which we have quoted, Tucker would have to certify under section K-501 that it was offering "new, unused" material which was not reworked, refurbished or changed, which it could not do. Section K-501 of the solicitation, however, does show that the Air Force contemplated the supply of newly manufactured material and that even offerors of new, unused but previously manufactured material--much less a firm such as Tucker offering used, reconditioned items--were obligated to take certain steps and provide certain information to ensure the acceptability of their offers.

More relevant to Tucker's offer of used, reconditioned items is the FAR clause, "Listing of Used or Reconditioned Material, Residual Inventory and Former Government Surplus Property (Apr. 1984)," found at 48 C.F.R. § 52.210-6, (1986), and incorporated into the RFP. This clause instructs an offeror who proposes to furnish used or reconditioned material to provide as an attachment to its offer information to include a complete description of the items; quantity; name of government agency from which acquired; and date of acquisition, if applicable. No used, reconditioned material other than that listed on the attachment shall be furnished under the resulting contract unless authorized in writing by the contracting officer.

In addition, incorporated in the solicitation were the clauses found at FAR, 48 C.F.R. § 52.210-5 ("New Material (Apr. 1984)"), and 48 C.F.R. § 52.210-7, ("Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property (Apr. 1984)"). We have stated with respect to these provisions:

"The first clause states that the contractor represents that all supplies or components delivered under the contract are new. The clause further provides that if the contractor believes furnishing used or reconditioned materials will be in the government's interest, he must so notify the contracting officer in writing, including his reasons therefore and the proposed consideration (benefit) to the government in the event the contracting officer authorizes use of used or reconditioned materials. The second clause prohibits the use of such used or reconditioned materials in the performance of the contract unless they were identified in an attachment to the proposal and approved by the contracting officer." Inter-Continental Equipment, Inc., B-225689, May 14, 1987, 87-1 C.P.D. ¶ 511.

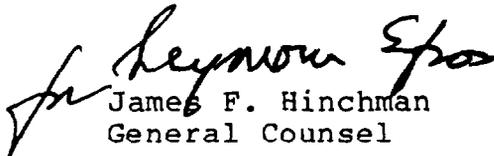
These RFP provisions make it clear that the Air Force was soliciting for the supply of newly manufactured items and that offerors proposing to furnish anything else must provide certain information in order for the government to determine the acceptability of those items. Tucker's argument that the rejection of its proposal is attributable to its being "sent after" a "mythical form" appears not only to be an unfair characterization of a telephone conversation which it could have used to its advantage, but to overlook a

more fundamental principle. That principle is that as an offeror, Tucker had an obligation to submit a proposal which fully complied with the terms and conditions of the solicitation. This obligation existed regardless of any telephone conversation Tucker may have had with the Air Force buyer.

By offering used, reconditioned items yet failing to provide the necessary information to allow government acceptance of these items, Tucker's proposal did not address the RFP's mandatory requirements for newly manufactured items, specifically those found at 48 C.F.R. §§ 52.210-5 and 52.210-7 and incorporated by reference in sections I-83 and I-84 of the RFP. The RFP required that contractors offering used, reconditioned items provide written notification, including a justification for such action, to the contracting officer and identify those items in an attachment to its proposal. This Tucker failed to do. Consequently, we think the Air Force properly rejected Tucker's proposal as technically unacceptable.

The fact that Tucker offered prices which were lower than Fluke's does not require the Air Force to accept a proposal such as Tucker's, which is technically unacceptable. See Blane Enterprises, B-220619, Nov. 14, 1985, 85-2 C.P.D. ¶ 557.

The protest is denied.


James F. Hinchman
General Counsel