



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Industrial Storage Equipment-Pacific
File: B-228123
Date: December 4, 1987

DIGEST

Protest of rejection of equal product offered in response to a brand name or equal procurement is sustained where rejection was based on failure to meet salient characteristics that were not listed in the invitation.

DECISION

Industrial Storage Equipment-Pacific protests the rejection as nonresponsive of the bid it submitted in response to Department of the Army invitation for bids (IFB) No. DAHC77-87-B-0333.

We sustain the protest.

The IFB solicited an upright storage rack, a heavy duty crossbar, pallet storage rack crossbars in two sizes, and a heavy duty skid channel, all on a brand name or equal basis. For each of the five line items the IFB specified a model number manufactured by Lodi Metal Tech, Inc., and the required load capacity of the item. For the skid channel and the heavy duty crossbar, the IFB also specified a 48-inch frame depth. In addition, the IFB provided that all items had to be compatible with previously purchased Lodi Metal Tech racks. The IFB contained the standard brand name or equal clause and advised bidders offering equal products to furnish brochures with descriptions and specifications for evaluation purposes. The contract was to be awarded to the responsive, responsible bidder who submitted the lowest aggregate bid for all five line items.

The Army rejected Industrial's low bid because it found that the products offered for line items 0002-0004 had different dimensions than the specified products, and that Industrial had not provided sufficient technical information for the Army to evaluate the skid channel Industrial offered for line item 0005. The Army awarded a contract for all five items to Lodi Metal Tech. Industrial protests that the

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items it offered to provide comply with the requirements specified in the IFB. Contract performance has been withheld pending our resolution of the protest.

To be responsive to a brand name or equal solicitation, a bidder offering an equal item must provide sufficient descriptive literature to permit the contracting agency to assess whether the product offered possesses each salient characteristic of the brand name product specified in the solicitation. G. A. Braun, Inc., B-216645, Feb. 21, 1985, 85-1 C.P.D. ¶ 218. The contracting agency, however, has an obligation to inform bidders of the characteristics of the brand name product that are essential to the government's needs. Ciba Corning Diagnostics Corp., B-223131, Aug. 13, 1986, 86-2 C.P.D. ¶ 185. Thus, a product offered as an equal one need not meet unstated features of the brand name product, and where an agency does not include a list of salient characteristics in the solicitation the agency is precluded from rejecting an "equal" bid for noncompliance with a specific performance or design feature unless the offered item is significantly different from the brand name product. Id.

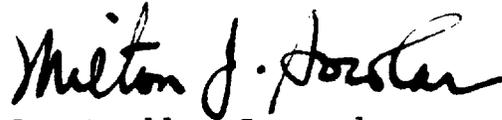
As stated above, the IFB provided the required capacity for line items 0002-0004 and, for the crossbar (line item 0002), a 48-inch frame depth. The IFB did not, however, specify any other dimensions. Consequently, the Army improperly rejected Industrial's bid for line items 0002-0004 for failure to meet specific dimensions. Concerning the skid channel, line item 0005, the IFB required that the offered item have a 1,980 pound capacity and a 48-inch frame depth. Our review of the technical literature submitted by Industrial with its bid shows that the skid channel the firm offered meets these requirements. Thus, we fail to see what information the Army needed to determine whether Industrial's bid was responsive regarding that line item. Under these circumstances, Industrial's protest is sustained.

While we sustain Industrial's protest, it is not clear whether Industrial's offered items will meet the Army's needs. Specifically, the crossbars bid by Industrial measured 1-5/8 inches by 7/8 inch rather than 1-1/2 inches by 3/4 inch, the measurements of the Lodi Metal Tech part, and the load beams offered measured 1-5/8 inches by 7/8 inch by 6 inches rather than 1-1/2 inches by 3/4 inch by 5 inches, the measurements of the specified Lodi Metal load beams. The Army rejected Industrial's bid because of these differences, but it does not appear that the Army actually has determined whether the differences might be so slight that Industrial's products in fact are compatible with the Lodi Metal Tech products. In this regard, Industrial has

provided our Office with its own analysis and drawings from which it appears that the items it offered are compatible with the products previously purchased by the Army.

Therefore, by separate letter of today to the Secretary of the Army we are recommending that the Army determine whether the items offered by Industrial for each line item will meet its needs and, if so, terminate the contract awarded to Lodi Metal Tech and award the contract to Industrial. If Industrial does not receive the award,^{1/} the firm is entitled to be reimbursed the costs it incurred in submitting its bid and pursuing this protest. 4 C.F.R. § 21.6 (1987); see Department of the Air Force--Request for Reconsideration, B-222645.2, Apr. 9, 1987, 87-1 C.P.D. ¶ 388.

The protest is sustained.



Acting
Comptroller General
of the United States

^{1/} We note that Industrial has not alleged that it would have offered different items if it had known of the dimensions in issue, and Industrial therefore would not be able to compete under a resolicitation specifying those dimensions.