



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Automated Marketing Systems, Inc.

File: B-230014

Date: March 18, 1988

DIGEST

1. Failure to include in bid any price for supplies solicited renders bid nonresponsive and omission cannot be corrected after bids are opened.
2. Allegation by protester, a small disadvantaged business (SDB) concern whose unpriced bid was rejected as nonresponsive, that brand-name-or-equal solicitation should be canceled and requirement resolicited because remaining bidders either did not offer "equal" products or were not SDB concerns is without merit where feature protester states is only possessed by its brand-name item was not listed a salient characteristics in the solicitation and where the solicitation was not set aside for SDB concerns.

DECISION

Automated Marketing Systems, Inc. (AMSI), protests the rejection of its bid as nonresponsive and seeks either the opportunity to correct its bid or the cancellation and resolicitation of invitation for bids (IFB) No. F30636-87-BA036 issued by Plattsburg Air Force Base, New York. The IFB is for the supply of three Safety Storage, Inc., Model 22 containers, or equal, for storage of chemicals and hazardous materials.

We deny the protest.

When the procurement was synopsisized in the Commerce Business Daily (CBD), the notice provided that the solicitation was "being considered" for a 100-percent set aside for small socially and economically disadvantaged business concerns. Interested small disadvantaged business (SDB) concerns were urged to submit, within 15 days of the notice, evidence of capability to perform and eligibility as an SDB. If adequate interest was not received, the notice stated that the solicitation would be issued as a 100-percent small business set aside "without further notice."

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AMSI was one of only three SDB concerns to reply and the only one to submit the requested evidence. Since there were 51 potential bidders, the Air Force determined to issue the IFB only as a 100-percent small business set-aside and incorporated by reference the pertinent set-aside clause, Federal Acquisition Regulation (FAR) § 52.219.6 (1984).

The IFB, at page 2, set forth those salient characteristics of the brand-name container that any "equal" product must meet. Although the brand name container had been approved by the Factory Mutual System, such approval was not included as a salient characteristic, nor did the characteristics include compliance with any particular regulations concerning storage of hazardous materials.

Page 2 of the IFB also provided spaces for the insertion of unit prices and extended amounts for the containers offered by bidders. Pursuant to FAR § 52.214-12 (FAC 84-12), incorporated by reference in the IFB, bidders were required to furnish unit and extended prices for each item offered. AMSI submitted a bid package offering the brand-name item but inadvertently failed to provide any prices.

The Air Force received five responses, two of which were declinations to bid. AMSI's bid was rejected as nonresponsive for failing to include any prices. The low bid, from a small business concern offering an "equal" product, is being evaluated by the Air Force. The only other bid received, also for an "equal" product, was from an SDB concern.

AMSI contends that instead of rejecting its bid, the Air Force should have notified it of the failure to complete page 2 and allowed AMSI to correct its mistake. The Air Force correctly responds that it had no choice but to reject the AMSI bid as nonresponsive.

In general, a bid must be rejected as nonresponsive if it does not include a price for every item solicited in the IFB. E.H. Morrill Co., 63 Comp. Gen. 348 (1984), 84-1 CPD ¶ 508; MTC Industries & Research Carmiel, Ltd., B-227163, Aug. 18, 1987, 87-2 CPD ¶ 174. Since responsiveness must be determined at the time of bid opening, AMSI could not use mistake-in-bid procedures to "correct" its nonresponsive bid after bid opening. E.H. Morrill Co., supra; Flex-Key Corporation, B-229630, Dec. 10, 1987, 87-2 CPD ¶ 580. Inasmuch as AMSI failed to provide any prices, it would have been improper for the Air Force to give it an opportunity to send in a completed page 2. Under the circumstances, such a "correction" would be tantamount to giving AMSI another opportunity to bid after the other bids had been exposed, thereby compromising the competitive bidding system.

Alternatively, AMSI contends that the solicitation should be canceled and the procurement recompeted because only its bid would have satisfied the Air Force's requirement to contract with an SDB concern for the supply of an item which would meet specifications. Only one of the two remaining competitors--not the low bidder--represented itself to be an SDB concern and, AMSI claims, neither of the remaining bidders offered a product equal to the brand-name item. AMSI's contentions do not provide a basis for cancellation of the solicitation.

AMSI maintains that no item can be considered equal to the brand name, which only AMSI offered, because only the brand name has been approved by the Factory Mutual System. In its comments to the agency report, AMSI also notes that the brand name container complies with various local, state, and federal regulations and ordinances concerning hazardous waste and materials storage.

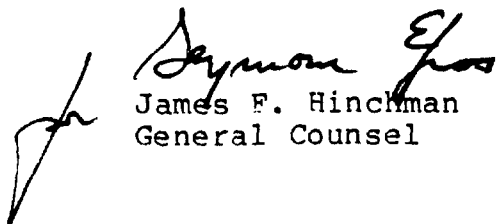
In a "brand name or equal" procurement, an "equal" product need not meet unstated features of the brand-name item, but only the item's salient characteristics expressed in the solicitation. Security Engineered Machinery, B-220557, Sept. 27, 1985, 85-2 CPD ¶ 353; Scanray Corporation, B-215275, Sept. 17, 1984, 84-2 CPD ¶ 299. Since neither attainment of Factory Mutual System approval nor compliance with any particular regulations was stated as a salient characteristic, failure of an "equal" item to have these qualities is not a ground for rejection of a bid offering it.

AMSI's apparent belief that this solicitation must be canceled if it would not result in an award to an SDB concern is contradicted by the terms of the solicitation. The Air Force was only considering an SDB set-aside and, when it determined that there was inadequate interest from such firms, it actually issued the IFB as a 100-percent small business set aside. Although AMSI complains that it was not notified of this determination, we observe that the CBD advised that there would be no further notice, and in any event, the IFB itself was sufficient notice that the solicitation was not an SDB set-aside.

To the extent AMSI is protesting that the salient characteristics were deficient in not requiring Factory Mutual System approval or that the Air Force should have issued the IFB as a 100-percent SDB set-aside, AMSI's protest is untimely and not for consideration on the merits. Our Bid Protest Regulations require that where, as here, alleged solicitation improprieties, apparent on the face of

the IFB, are the basis of a protest, it must be filed prior to the bid opening date. 4 C.F.R. § 21.2(a)(1) (1987).

The protest is denied.



James F. Hinchman
General Counsel