



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** ATS Cases, Inc.

**File:** B-235690

**Date:** September 1, 1989

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### **DIGEST**

1. Where invitation for bids contains the standard descriptive literature clause plus other references in the Bid Schedule and Evaluation for Award provisions which emphasize the need for literature to describe how the offered item was to be constructed and the materials to be used, rejection of protester's bid, which admittedly failed to contain descriptive literature on key aspects of the offered item, was proper.
2. A bidder may not rely upon the contract requirement of first article approval to replace the bid requirement of descriptive literature to determine responsiveness.
3. A nonresponsive bid may not be accepted, even where it might result in monetary savings to the government, since acceptance would compromise the integrity of the sealed bidding system.
4. Record does not support protester's allegation that awardee received preferential treatment with respect to advance notice of award. Moreover, contracting agency provided the "prompt" notice of award required by regulation by mailing notices to the unsuccessful bidders the day after award was made.

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### **DECISION**

ATS Cases, Inc., protests the rejection of its apparent low bid and the award of a contract to ISM Corporation under invitation for bids (IFB) No. DAKF23-89-B-0038, issued by the Department of the Army for storage and transfer cases for Zenith 248 computers. ATS' principal contention is that its low bid was improperly rejected for failing to contain adequate descriptive literature.

We deny the protest.

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The IFB had a requirement for descriptive literature which was mentioned in three places. The IFB Schedule put bidders on notice that there was a detailed Descriptive Literature requirement in section L and that such literature would be among the factors considered in the evaluation for award under section M of the IFB. The latter section advised bidders that the descriptive literature submitted, "which includes blue line drawing(s) or its equivalent indicating how cases are to be constructed and identifying materials to be used," would be evaluated and if not "adequate," would result in the rejection of the bid as nonresponsive.

Six bids were received by the bid opening date of April 10, with ATS being the lowest bidder, DAGO Cases the second lowest bidder, and ISM the third lowest bidder. All the bids received were evaluated, and as a result, the bids of both ATS and DAGO were found to be nonresponsive for failure to provide sufficient descriptive literature. ISM was determined to be the low responsive and responsible bidder and all bidders were notified of the award to it by mail on May 11. ATS filed a protest in our Office on June 2, challenging: (1) the rejection of its bid as nonresponsive; (2) the selection of a vendor with a higher bid; and (3) the propriety of the Army's award notification procedures.

ATS' first argument, that its bid was improperly rejected, centers on its interpretation of how much descriptive literature was required. ATS contends that because the solicitation contained detailed specifications, and called for a first article approval, the descriptive information it did include was "adequate" to determine ATS' "ability to meet the specifications." The solicitation explicitly required that the descriptive literature submitted with the bid establish the bid's responsiveness. Where descriptive literature is required to establish the bidder's conformance to the specifications, and bidders are so cautioned, the bid must be rejected as nonresponsive if the literature submitted fails to show clearly that the offered product conforms to the specifications. JoaQuin Mfg. Corp., B-228515, Jan. 11, 1988, 88-1 CPD ¶ 15.

ATS' descriptive literature consisted of several "preliminary drawings" of case components, a cross-section of the exterior case wall, an overall exterior view of the case, and a general, pre-printed commercial brochure about the company's line of products. Both in its letter notifying ATS of the award to ISM, and in its report to our Office, the agency has identified the specific respects in which it found ATS' descriptive literature inadequate, as a

result of which it could not determine whether the product ATS offered to supply met the IFB's requirements.<sup>1/</sup>

ATS does not dispute the agency's position that its descriptive literature does not contain such information. Rather, ATS argues that the agency was "overzealous" in its application of the descriptive literature requirements, especially since the IFB required a first article approval, which would assure the agency of receiving a product that complied with its specifications.

The protester's reliance on the first article approval clause is misplaced. The first article approval clause incorporated into this solicitation refers to the government's post-award right to test the vendor's product to ensure that it in fact complies with the specifications. The descriptive literature requirement, on the other hand, is used by the government to determine whether the bidder offers to furnish a complaint product, and therefore has submitted a responsive bid. Responsiveness must be determined from the bid and material available at bid opening. Lynch Mach. Co., Inc., B-228689, Sept. 24, 1987, 87-2 CPD ¶ 297. A bidder may not be afforded an opportunity after bid opening to explain or clarify its bid so as to make it responsive. Id. Since ATS admittedly failed to provide detailed descriptive literature, the Army properly rejected its bid as nonresponsive.

ATS also argues that an award to it based on its low price would be in the government's best interest. We consistently have held, however, that a nonresponsive bid may not be accepted, even where it might result in monetary savings to the government, since acceptance would compromise the integrity of the sealed bidding system. Systron Donner, B-230945, July 5, 1988, 88-2 CPD ¶ 7.

ATS further contends that the Army granted ISM preferential treatment with respect to the notification of award, specifically, that it advised ISM that it would receive the award well in advance of the fact. As evidence of this, ATS has submitted a newspaper article, dated one day before the award to ISM, in which ISM is said to have "recently learned that it has been awarded another contract . . . for cases that will go to Fort Campbell, Ky."

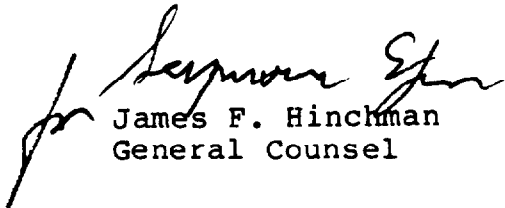
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<sup>1/</sup> In contrast, our review of IMS' bid shows its descriptive literature to be much more extensive and detailed than the protester's.

The agency denies that it gave ISM early notice of its award. Rather, the contracting officer states that he only discussed responsibility issues with ISM prior to the May 10 award, and that ISM must have assumed that it received award and so told the newspaper. ISM states that it had taken an "optimistic" view of the fact that the contracting officer had asked it for financial and trade references in order to make a responsibility determination, and that it had expressed its optimism about prospective business in its interview with the newspaper reporter.

Moreover, we note that the agency mailed notice of award letters to the unsuccessful bidders the day after the award was made, thereby satisfying the prompt notification requirement of Federal Acquisition Regulation § 14.408-1(a)(1) (FAC 84-7). On this record, we find no evidence of preferential treatment.

The protest is denied.

  
James F. Hinchman  
General Counsel