



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Electroswitch

File: B-242667

Date: May 10, 1991

William M. Mello for the protester.

Michael S. HacsKaylo, Esq., Department of Energy, for the agency.

Paula A. Williams, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest against award under invitation for bids on the basis that the product offered does not meet compatible/ interchangeable requirement and specified salient characteristics of product specified is denied where there is no evidence that the descriptive data accompanying the bid did not demonstrate that the offered product conforms to the requirements set forth in the solicitation.

2. To the extent the protester is arguing that the agency should have evaluated the quality of the offered product, the protest filed after bid opening is an untimely protest against an apparent solicitation impropriety.

DECISION

Electroswitch protests the award of a contract to Kinnaman Electric, Inc. under invitation for bids (IFB) No. DE-FB65-90WA07850, issued by the Western Area Power Administration, Department of Energy, for the purchase of modular control switches and accessories. The protester contends that the agency improperly accepted Kinnaman's offered product.

We deny the protest in part and dismiss it in part.

The solicitation sought bids for 28 line items separated into 2 "all-or-none" groupings comprised of various switches, connectors, pins and special tools. The items are being purchased as replacement stock and to ensure compatibility of the systems and interchangeability of parts between systems, the agency required the offered switches to be compatible/ interchangeable with previously bought switches and to meet certain salient characteristics. A bidder offering a product

other than Electros witch series 20M was required by the IFB to furnish as part of its bid specified drawings and data which the contracting activity had determined were necessary to determine whether the product offered was compliant with the specific requirements for each bid item.

Five bids were received in response to the IFB and after the agency rejected three bids for reasons unrelated to this protest, Kinnaman, offering a product other than the Electros witch series 20M at a total bid of \$355,460, was the low remaining bidder. Electros witch submitted a bid of \$418,794.50 for the brand name product. The contracting agency evaluated the documentation submitted with Kinnaman's bid and after determining that the offered products were compatible/interchangeable with Electros witch's, awarded the contract to Kinnaman as the low, responsive, responsible bidder.

In its protest, Electros witch asserts the same protest grounds that it initially raised in an agency-level protest. The protester contends that the technical data and product drawings Kinnaman submitted do not indicate that the control switches offered satisfy the IFB requirement that switch contacts be configured and wired compatible/interchangeable with switches previously purchased by the agency, and show that Kinnaman's products do not offer removable handles, fixed handles, and nameplates that are compatible/interchangeable with the brand name accessories. Electros witch also asserts that the allegedly inferior "quality" of Kinnaman's offered products should have been considered.

In procurements that use a purchase description based on compatibility/interchangeability with a brand name product, to be responsive a bid offering a compatible/interchangeable product must demonstrate that the product conforms to the salient characteristics of the brand name product listed in the solicitation. See Tri Tool, Inc., B-233153, Jan. 25, 1989, 89-1 CPD ¶ 84. A bidder must submit descriptive literature, as required, to permit the contracting agency to determine that the offered product possesses the salient characteristics specified in the solicitation. See JoaQuin Mfg. Corp., B-228515, Jan. 11, 1988, 88-1 CPD ¶ 15.

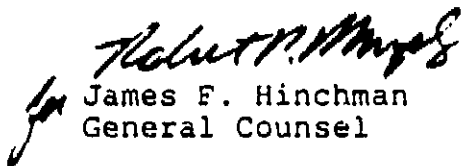
Here, the IFB called for control switches with switch contacts configured and wired as depicted in component drawings that are compatible/interchangeable with other switches previously purchased from other suppliers. The technical data submitted with Kinnaman's bid was reviewed by DOE's technical personnel who concluded that the control switches offered by Kinnaman satisfied the requirement for compatibility and interchangeability with previously purchased control switches, and met the salient characteristics. Notwithstanding Electros witch's

contrary assumption, the solicitation does not require the removable handles, fixed handles and nameplates to be compatible or interchangeable with only the brand name Electros witch series 20M control switch. Electros witch has not provided any evidence that Kinnaman's product failed to meet any particular salient characteristics.

Electros witch's only other specific objection is that Kinnaman's descriptive literature is not appropriately certified and evidences a lack of the "basic controls necessary for any manufacturing organization." We are not aware of any requirement that descriptive literature be prepared in the manner which Electros witch assumes is necessary. In sum, while it is Electros witch's view that there is no known product compatible/interchangeable with its series 20M switch and accessories, there is nothing in the record which suggests that the agency unreasonably concluded that Kinnaman's bid for a compatible product can satisfy the agency's needs as specified in the IFB.

To the extent that the protester is arguing that in addition to determining compliance with the salient characteristics in the IFB the agency should have evaluated the "quality" of any offered product, since there was no such requirement in the solicitation, it is alleging an apparent solicitation impropriety which, to be timely, had to be raised prior to bid opening. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1991). It is not for consideration here since the protest was first filed with the agency after the award had been made.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel