

K. Riback 149492



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Allstate Office Products Inc.

File: B-252299

Date: June 11, 1993

C.L. Butler for the protester,
Christy L. Gherlein, Esq., General Services Administration,
for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency properly rejected bid as nonresponsive where required bid samples included as part of the bid failed to conform to requirements listed in solicitation.

DECISION

Allstate protests the General Services Administration's (GSA) rejection of its bid as nonresponsive under a number of line items under invitation for bids (IFB) No. 2FYS-BJ-93-0001-S for rollerball pens. GSA rejected Allstate's bid as nonresponsive under these line items because it found the protester's bid samples unacceptable. Allstate challenges GSA's determination that its samples were nonconforming.

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

The IFB solicited bids for 8 national stock numbers (NSN) under 27 different line items covering four different stock supply locations. The IFB provided for award on an item-by-item basis of a 1-year requirements contract to the low-priced offeror whose bid met all the solicitation requirements. The IFB required bidders to submit 36 samples for each NSN for which a bid was submitted. Under the IFB's "Bid Samples" clause (Federal Acquisition Regulation § 52.214-20 ALT I), the bid samples were to be submitted as part of the bid and were to "be tested or evaluated to determine compliance with all the characteristics listed for examination in the solicitation." The clause further stated that failure of the bid samples to meet the IFB requirements

would require rejection of the bid. The IFB provided, in this regard, that samples would be evaluated to determine compliance with commercial item description (CID) A-A-2695, which was included in the solicitation, and the item purchase description.

The CID stated that the pen samples would be subject to tests for performance characteristics relating to: drying time, writing characteristics, machine writing, cap off, and accelerated service.¹ Under the machine writing test, the CID provided that the "machine test shall be conducted on an Model W-10 Writing Test Machine or equal," and required that: "visual defects shall not be present in more than 1% of the written line . . . [,and] [t]he pen shall write for a minimum of 1300 meters." The test was also used to determine compliance with the solicitation requirements for smooth writing without fluctuation of line intensity, maintenance of color intensity, and the nonoccurrence of feathering, spreading or splitting of the pen markings.

Allstate submitted the low bid for all 27 line items by the October 14, 1992, amended bid opening date. On December 2, Allstate was awarded a contract for the five NSNs for which it submitted conforming samples (line items 1-15 and 23-25). Allstate's bid for three of the NSNs (line items 16-22 and 26-27) was rejected as nonresponsive because its bid samples failed certain performance tests. Specifically, Allstate's bid samples under NSN 7520-01-207-4268 (line items 16-19) and NSN 7520-01-207-4271 (line items 26-27) failed the machine writing test and the accelerated service test, and its bid samples under NSN 7520-01-207-4269 (line item 20-22) failed the accelerated service test. Allstate filed an agency-level protest on December 14. The agency denied Allstate's protest on January 25, 1993, and this protest to our Office followed.

Allstate initially challenged GSA's test results on the basis that GSA's testing laboratory failed to conduct the tests in accordance with CID A-A-2695, which Allstate asserted calls for the machine writing test to be conducted on an Anja 10-WB Writing Test Machine. The GSA laboratory used a Hartly Machine which, the protester asserts, is not equal to the Anja Machine.² The protester also contends

¹The accelerated service test provided that the pens shall be subjected to certain listed conditions of temperature and humidity and then examined for compliance with the machine writing test requirements.

²According to the protester, the Hartly Machine is a fixed station machine as opposed to the Anja 10-WB Machine, which
(continued...)

chat the solicitation's CID does not adequately define "visual defects" in machine writing test results. Finally, the protester argues that the pens that it offered here have previously been tested and found to be acceptable by GSA.

The record shows that the tests were conducted in the manner set forth in the solicitation's CID. In its report (which the protester does not dispute), the agency points out that, contrary to the protester's original assertion, CID A-A-2695 states that machine tests shall be conducted on a "Model W-10 Writing Test Machine or equal," and states that the referenced Model W-10 is the Hartly W-10 machine which was, in fact, used to conduct the tests. While the Anja 10-WB is considered an acceptable equivalent for the Hartly W-10 under the solicitation's CID, it is not the testing machine denominated in the IFB. The agency's use of the Model W-10 Writing Test Machine to conduct the writing machine test and the accelerated service test was proper and in accordance with the solicitation.

Allstate's objections to the Hartly Model W-10 and its complaint that the solicitation's CID does not adequately define "visual defects" in machine writing tests results, concern apparent solicitation improprieties which must be filed prior to the date of bid opening. 4 C.F.R. § 21.2(a)(1) (1993); ATD-American Co., B-231794, Oct. 18, 1988, 88-2 CPD ¶ 364. Allstate's protest, first filed after award was made, is untimely in this respect.

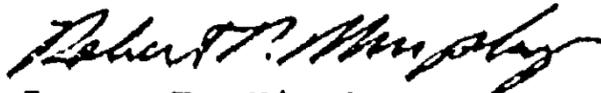
The protester argues that its pens have previously been found acceptable under this CID, that it has delivered more than 24 million pens to GSA without any reported failures or complaints, and that the samples submitted were from a lot of pens which was approved by a GSA quality assurance specialist when delivered under a prior GSA contract. The acceptance of items on prior contracts does not bind the procuring agency to accept nonconforming items under a subsequent contract. Ashland Scissors, Inc., B-240930.2, Jan. 30, 1991, 91-1 CPD ¶ 86. To hold otherwise would require the government to be forever bound by prior erroneous decisions. We deny this ground of protest since each procurement is a separate transaction and the fact that a product may have been found acceptable under one

²(...continued)

rotates the pens during writing and does not put excessive pressure on the point rims.

procurement does not preclude the rejection of a nonresponsive bid under a current procurement. Id.; JoaQuin Mfg. Corp., B-228515, Jan. 11, 1988, 88-1 CPD ¶ 15.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel