



Comptroller General
of the United States

329102

Washington, D.C. 20548

Decision

Matter of: Advanced Medical Systems, Inc.
File: B-258945
Date: February 13, 1995

Claire Sullivan for the protester.
Col. Riggs L. Wilks, Jr., and Maj. Michael G. Skenuion,
Department of the Army, for the agency.
Katherine I. Riback, Esq., and Paul E. Jordan, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Bid of "equal" product under brand name or equal solicitation was properly rejected as nonresponsive where the descriptive literature submitted with the bid failed to demonstrate compliance of the "equal" product with salient characteristics listed in the solicitation.

DECISION

Advanced Medical Systems, Inc. protests the rejection of its bid as nonresponsive and the award of a contract to Corometrics Medical Systems, Inc., for a fetal heart monitor under invitation for bids (IFB) No. DAKF06-94-B-0018, issued on a brand name or equal basis by the Department of the Army.

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

The IFB specified Corometrics Medical System Model 116BAL as the brand name product, and listed the salient characteristics that had to be satisfied by any product offered as an equal to the brand name item. The IFB required that a bidder offering an "equal" product: (1) meet the salient characteristics specified in the solicitation; (2) identify the brand name and make or model number of the "equal" product; (3) submit descriptive literature, such as cuts, illustrations, drawings, or a clear reference to previously furnished descriptive data available to the contracting officer; and (4) clearly describe any planned modification to the offered product to

conform to the salient characteristics by marking up the descriptive material to reflect the change(s). The IFB also stated that bids would be evaluated regarding the advantages and disadvantages to the government that might result from multiple awards.

Four bids were submitted by the July 20, 1994, bid opening date. Two bids were for a portion of the solicitation requirements, and two bids were for the total requirements. The agency reviewed the two partial bids and determined that multiple awards were not in the best interest of the government. Advanced submitted the lowest bid for the total solicitation requirements. The agency rejected Advanced's bid as nonresponsive because its descriptive literature failed to show that it was offering an equal product. Award was made on September 22, to Corometrics, which offered the brand name product. This protest followed.

Advanced contends that its offered "equal" product met the required specifications. In the alternative, Advanced argues that the requirement which the agency contends its proposed "equal" product failed to meet is "restrictive," and adds little value to the overall product. The protester asserts that the requirement should therefore be deleted and the solicitation reissued.

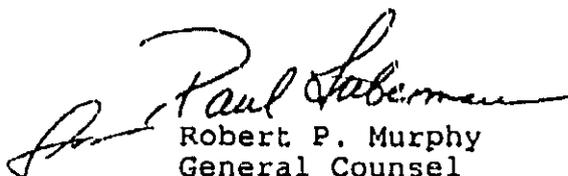
To be responsive under a brand name or equal IFB, bids offering "equal" products must conform to the salient characteristics of the brand name equipment listed in the solicitation. A bidder must submit, with its bid, sufficient descriptive literature to permit the contracting agency to assess whether the "equal" product meets all the salient characteristics specified in the IFB. Tri Tool, Inc., B-233153, Jan. 25, 1989, 89-1 CPD ¶ 84. When the descriptive literature submitted with the bid fails to establish that the products would meet all of the listed solicitation requirements, the bid must be rejected as nonresponsive. AZTEK, Inc., B-229897, Mar. 25, 1988, 88-1 CPD ¶ 308.

The descriptive literature that Advanced submitted with its bid failed to show compliance with a material salient characteristic listed for the brand name product. The fetal heart monitor was required to have a total of three independent digital displays such that, with one display to monitor the Mother's uterine activity, and two displays, in the event of twins, there would be a separate display for each fetal heart rate. Advanced's proposed "equal" product could simultaneously monitor two fetal heart rates and uterine activity by printing the fetal heart rates on a strip chart. However, the agency noted that the proposed

monitor could only digitally display one fetal heart rate and uterine activity.¹ Accordingly, Advanced's bid was properly rejected as nonresponsive. AZTEK, Inc., supra.

To the extent that Advanced argues that the requirement for three digital displays is "restrictive," and therefore the solicitation should be reissued, this aspect of its protest is untimely. Our Bid Protest Regulations require that protests based upon alleged improprieties in an IFB which are apparent prior to the bid opening time be filed prior to that time. 4 C.F.R. § 21.2(a) (1994).

The protest is denied in part and dismissed in part.


Robert P. Murphy
General Counsel

¹The agency stated that the requirement for three digital displays was important because it enabled personnel in a busy maternity ward to monitor the fetal heart rate of twins, and to detect fetal distress at the earliest possible moment.