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Assembly



Comptroller General
of the United States

147171

Washington, D.C. 20548

Decision

Matter of: Truetech, Inc.
File: B-258398
Date: January 17, 1995

DECISION

Truetech, Inc. protests the decision of the Department of the Army to accept the low bid of Anachemia Canada, Inc. under invitation for bids (IFB) No. DAAA09-94-B-0304 for chemical detector kits. Truetech alleges that Anachemia's bid was nonresponsive for failure to identify the qualified product it was offering.

We dismiss the protest because it fails to state a valid legal basis of protest. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1994).

The IFB contained the clause set forth in Federal Acquisition Regulation § 52.209-1 entitled "Qualification Requirements." Paragraph (b) of that clause provided that the product offered had to be qualified by the time of award. Paragraph (e) states that if the qualified product is not identified in the bid, "the Contracting Officer shall reject the bid." Although Anachemia's bid took no exception to the terms of the IFB, it did not identify a qualified product.

Truetech asserts that the mandatory language of paragraph (e) requires rejection of the bid as nonresponsive. In doing so, Truetech acknowledges that we considered and rejected this argument in our decision Gardner Zemke Co., B-238334, Apr. 5, 1990, 90-1 CPD ¶ 372. Nonetheless, Truetech maintains that our holding in that decision was in error and should be reversed. In that decision we held:

" . . . since the qualifications requirements clause clearly concerns bidder responsibility rather than responsiveness, it would have been improper for the agency to reject the challenged bids at bid opening for failure to identify the offerer [qualified product in question]."

We did so notwithstanding the mandatory rejection language upon which Truetech relies, noting that "[i]t is well established . . . that the terms of a solicitation cannot

convert a matter of responsibility into one of responsiveness."

Trueteck asserts that, while paragraph (b) of the clause establishes a responsibility requirement to qualify a product by the time of award, paragraph (e) establishes a separate responsiveness requirement to identify qualified products in the bid as of the time of bid opening. This bifurcated reading of the clause is legally incorrect.

As we held in Gardner Zemke Co., supra, the entire clause concerns responsibility because a bidder may demonstrate its capacity to provide a qualified product at any time prior to award. Nonresponsiveness is an issue only when a bidder provides information with its bid that reduces, limits or modifies a material requirement of the solicitation. Id. By completing the bid schedule and signing its bid, Anachemia obligated itself to furnish products conforming to the IFB's requirements, including the qualifications requirement. Thus, there was no basis for the Army to find Anachemia's bid nonresponsive.

Since we have previously decided the issue raised by Trueteck, the protest is dismissed since it does not state a valid basis for protest.

The protest is dismissed.



John Van Schaik
Acting Assistant General Counsel