

01270

DECISION



M. Boyle
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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE:

DATE: November 9, 1976

B-186476

MATTER OF:

Ocean Applied Research Corporation

DIGEST:

1. Protester's blanket statement that its product met all salient characteristics listed in IFB did not satisfy bidder's requirement in IFB's brand name or equal clause to submit descriptive material necessary for purchasing activity to determine whether product met such characteristics and to establish what bidder proposed to furnish.
2. Protester, who did not see data on its product accumulated by agency but relied on such data to establish that similar product met salient characteristics of IFB, took risk that data would be complete and accurate. Where such data failed to establish that product met two salient characteristics, protester's bid was properly rejected as nonresponsive.

Ocean Applied Research Corporation (OAR) protests the award of a contract for 100 marine homing systems and associated technical manuals and documentation under invitation for bids (IFB) No. CG-62,919-A, issued on February 27, 1976, by the United States Coast Guard.

The IFB specified that each marine VHF-FM homing system was to be composed of Emergency Beacon Corporation models EBC-RT-55M VHF-FM transceiver and EBC-DF-55M director finder (modified to have a variable indicator meter damping control) or equal, having the salient characteristics stipulated in the brand name or equal purchase description. The

IFB also expressly incorporated the brand name or equal clause of section 1-1.307-6 (1964 ed. amend. 139) of the Federal Procurement Regulations. That clause provides in pertinent part as follows:

"(c) (1) * * * The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (1) determine whether the product offered meets the salient characteristics requirement of the invitation for bids, and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

"(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he shall (i) include in his bid a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications."

Bids were received from six firms. The low bidder, Pilot Instrument Corporation, submitted its bid based on its way finder model 804R but failed to furnish as a part of its bid any information to show that its model would meet eight of the salient characteristics. Further, based on information submitted by the low bidder, the Coast Guard determined that its model would not meet three of the salient characteristics of the receiver specified in the IFB. Accordingly, the Coast Guard advised the low bidder that its bid was nonresponsive.

OAR submitted the second low bid. OAR's bid was based on its model RDF-334, radio homing system. OAR expressly stated that the equipment being offered met all the salient characteristics stipulated in the IFB. OAR also stated that the RDF-334 model was a simplified version of its model ADFS-320, a system purchased in early 1975 by the Coast Guard. Further, OAR referred to evaluation reports on the model ADFS-320 that it believed were performed by the Coast Guard and recently submitted to Coast Guard Headquarters; however, OAR had not seen that data. OAR also referred to design information concerning the RDF-334 that was presented to and reviewed with Coast Guard technical personnel. As additional supporting documentation, OAR submitted a general description of the operational concept of the RDF-334, a summary of its specifications, a glossy photograph and outline drawing of it, a block diagram of the systems components, a dimensional drawing of the antenna. In addition, OAR submitted certain information on related products it previously manufactured.

The Coast Guard determined that OAR failed to submit sufficient information to show its product's equality with eight of the salient characteristics of the receiver component.

The third lowest bid was submitted by Dorne and Margolin, Inc. (D&M). D&M submitted its model DM SE47-7, which it stated was equal to the purchase description of the IFB. To satisfy the receiver requirement of the IFB, D&M submitted its model DM ER4-1. To show the equality of its model's features with the salient characteristics of the IFB, in its bid D&M listed in one column the IFB's salient characteristics and in an adjacent column listed the features of its model DM ER4-1. That tabulation was followed by this note: "The * * * [D&M] DM ER4-1 receiver will be a basic TRITON transceiver modified to operate with the DM SE47-7 VHF/FM homers system." (Emphasis added.) As supporting documentation, D&M submitted certain general information on its direction-finding systems, a dimensional drawing on its DM ED3-5/A homing indicator, a dimensional drawing of its DM C63-4 VHF Comm antenna, and a dimensional drawing of its DM ER4-1 VHF/FM transceiver.

In addition, it appears that D&M provided a modified Triton receiver on a previous contract with the Coast Guard and the Coast Guard reports that its test results established that the D&M unit met the IFB's receiver salient characteristics. Therefore, the Coast Guard determined that D&M had adequately satisfied the requirements of the brand name or equal clause of the IFB and made award to it on April 29, 1976. D&M completed performance of the contract on or about September 29, 1976.

OAR contends that the Coast Guard improperly determined that its bid was nonresponsive because: (1) OAR submitted its bid without exceptions and expressly stated that the receiver component

of its RDF-334 model met all the salient characteristics; (2) OAR indicated that the receiver of its RDF-334 model was a simplified version of another model, the ADFS-320, previously purchased by the Coast Guard and that test data compiled by the Coast Guard on the ADFS-320 should show that it met all the salient characteristics of the IFB; and (3) a comparison of block diagram drawings of both systems' receiver units submitted with OAR's bid would reveal that both receiver units were essentially identical.

The Coast Guard, with regard to OAR's first contention, states that OAR failed to provide sufficient information for the Coast Guard to determine whether its product met certain of the salient characteristics and that OAR's statement that its product satisfied all the salient characteristics did not cure the deficiency. It is well settled that an offer of blanket compliance with the salient characteristics listed in an IFB, as made by OAR in its bid, is not an acceptable substitute for required descriptive data on the "equal" product. See, e.g., 41 Comp. Gen. 366 (1961); 45 Comp. Gen. 312 (1965); B-161343, June 30, 1967; 50 Comp. Gen. 193 (1970).

With regard to OAR's second and third contentions, the Coast Guard indicates that although OAR stated that the RDF-334 system was a "simplified version" of the ADFS-320 system, from the information provided by OAR, the Coast Guard could not determine in what manner the ADFS-320 would be modified and, therefore, it could not determine what it would be buying if an award was made to OAR. Further, the Coast Guard states that its test data on the ADFS-320 system did not establish that the RDF-334 system met all the salient characteristics of the IFB. OAR argues, however, that if the Coast Guard properly tested the ADFS-320 system, its data would coincide with OAR's in-house test data, which, it stated, established that the ADFS-320 system satisfied the salient characteristics of the IFB.


In responding to an IFB employing a brand name or equal purchase description, the responsiveness of an "equal" bid, as noted in this IFB, is dependent upon the completeness and sufficiency of the descriptive information submitted with the bid or previously submitted information or information reasonably available to the purchasing activity. B-161343, supra. It is not enough that the bidder believes its product is equal; the Government must be able to determine equality. B-170697, December 8, 1970. Moreover, the IFB expressly warned a bidder who proposed to modify a product to make it conform to the salient characteristics of the IFB "shall (i) include in his bid a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications."

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By its reliance on the Coast Guard's test data on the ADFS-320 system--data which OAR had not seen--to establish that the RDF-334 system would meet the salient characteristics of the IFB, OAR was taking the risk that such data would be complete and accurate. Since the record shows that such data was incomplete in that it did not establish that all the salient characteristics were met, and since OAR failed to show how it intended to modify the ADFS-320 system to meet requirements of the IFB, we believe that the Coast Guard properly rejected OAR's bid as nonresponsive.

Accordingly, OAR's protest is denied.

At OAR's request, we have examined D&M's bid to determine whether sufficient information was provided to establish that D&M's product met the salient characteristics of the IFB. Our examination reveals no basis to conclude that the Coast Guard improperly concluded that the D&M bid was responsive.


Acting Comptroller General
of the United States