



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bryan Construction Co.

File: B-261482

Date: September 20, 1995

Charles Bryan for the protester.

Glenn A. Heisler, Esq., Panama Canal Commission, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected the protester's bid of an "equal" product under a brand name or equal solicitation where the descriptive literature furnished with the protester's bid failed to demonstrate that this "equal" product satisfies the salient characteristics in the solicitation.

DECISION

Bryan Construction Co. protests the rejection of its apparent low bid as nonresponsive and the award of a contract to Burgos Constructores under invitation for bids (IFB) No. CSP-89193-BD-28, issued by the Panama Canal Commission on a brand name or equal basis for a prefabricated rigid frame steel mezzanine. The agency rejected the protester's bid because the firm's descriptive literature did not establish that its "equal" product satisfies the salient characteristics in the IFB.

We deny the protest.

The IFB, issued on a brand name or equal basis, specified a "Wildeck custom design or equal" prefabricated rigid steel frame mezzanine. The IFB contained five categories of salient characteristics. Specifically, the IFB listed requirements for the size, column spacing, clearance height, and design load of the mezzanine, and included requirements for a galvanized floorplate, columns, a framing system, and stairs.

The IFB required bidders offering to furnish an "equal" product to submit descriptive literature establishing the technical acceptability of the "equal" product, i.e., that the "equal" product satisfies the salient characteristics in the IFB. In this regard, the IFB included the descriptive literature clause found at Federal Acquisition Regulation § 52.214-21. Bidders were advised that the failure of the descriptive literature to show that the product offered satisfies the requirements of the IFB would require rejection of the bid.

Eleven bids were received at bid opening on March 22, 1995. The protester submitted the apparent low bid of \$48,700 for an "equal" product, specifically, a mezzanine manufactured by International Sales, Ltd. As descriptive literature, the protester furnished three snapshots of mezzanines installed at three federal facilities, one page of limited design information, and two structural sketches. Burgos submitted the apparent second low bid of \$60,750 for the Wildeck brand name product. Burgos submitted three pages of descriptive literature for the brand name product which included sketches and more detailed design information.

The agency rejected the protester's bid as nonresponsive because its descriptive literature failed to show that its "equal" product satisfied the salient characteristics in the IFB. For example, based on the protester's limited descriptive literature, the agency was unable to determine whether the protester's product complied with the clearance height and design load requirements and whether the columns and stairs complied with required dimensions and specifications. Concerning Burgos's bid, while recognizing that its descriptive literature for the Wildeck brand name product was not complete with respect to the size, column spacing, clearance height, and design load requirements and with respect to the requirements for stairs, the agency acknowledged that Burgos was, in fact, offering the Wildeck brand name product required by the IFB and did not take exception in its bid to any of the requirements in the IFB. Accordingly, the agency awarded the contract to Burgos as the low, responsive, and responsible bidder.

The protester contends that its bid was improperly rejected as nonresponsive. In this regard, the protester argues that compliance with the descriptive literature requirement in the IFB was unnecessary because it submitted a bid for a "brand name" product, that is, a mezzanine manufactured by "International Sales, Ltd." The protester also states that it did not take exception in its bid to any of the salient characteristics in the IFB, and therefore, its bid should have been accepted as responsive.

To be responsive under a brand name or equal IFB, bids offering "equal" products must conform to the salient characteristics of the brand name product 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. Advanced Medical Sys., Inc., B-258945,

Feb. 13, 1995, 95-1 CPD ¶ 67. When the descriptive literature submitted with the bid fails to establish that the product would meet all of the listed solicitation requirements, the bid must be rejected as nonresponsive. Id.; AZTEK, Inc., B-229897, Mar. 25, 1988, 88-1 CPD ¶ 308.

Although the protester argues that its mezzanine manufactured by "International Sales, Ltd." is a "brand name" product, its offered product is not a "Wildeck" brand name product as required by the IFB. Rather, a mezzanine like the one offered by the protester—which is manufactured by a company other than Wildeck, the "brand name" manufacturer as designated in the IFB—must be considered an "equal" product which must satisfy the salient characteristics in the IFB. To the extent the protester suggests that the IFB should be read in a broader, less restrictive manner, that is, manufacturers other than Wildeck should be considered brand name manufacturers of mezzanines, its protest is untimely since protests based upon alleged improprieties in an IFB which are apparent prior to bid opening must be filed prior to that time. Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1995).

While the protester did not take exception in its bid to any of the salient characteristics in the IFB, it failed to demonstrate through its descriptive literature that its "equal" product satisfies the salient characteristics in the IFB. For example, the protester does not dispute that its descriptive literature fails to show that its "equal" product complies with clearance height and design load requirements and that the columns on its product satisfy required dimensions and specifications. In addition, the protester only states that the snapshots included with its descriptive literature show stairs, but does not dispute that its descriptive literature fails to show that its stairs satisfy the required dimensions and specifications.

The fact that the protester did not take exception in its bid to any of the salient characteristics in the IFB does not establish the responsiveness of its bid because its descriptive literature fails to evidence, as required by the IFB, that its "equal" product satisfies these requirements. See Amjay Chemicals, B-252502, May 28, 1993, 93-1 CPD ¶ 426. Accordingly, we conclude that the agency properly rejected the protester's bid of an "equal" product under this brand name or equal IFB as nonresponsive.

Finally, the protester questions the agency's acceptance of Burgos's bid as responsive when the descriptive literature it submitted was incomplete.

Burgos, which offered the Wildeck brand name product, was not required to submit descriptive literature. Nevertheless, its descriptive literature could not be disregarded by the agency to the extent that it clearly qualified its bid by describing a product which would not satisfy the salient characteristics in the IFB. Lappen Auto Supply Co., Inc., B-261475, Aug. 14, 1995, 95-2 CPD ¶ 68. While Burgos's descriptive literature was not complete, the protester has not pointed to anything in

the descriptive literature showing that the offered product would not satisfy a salient characteristic, thus qualifying its bid. Because Burgos offered the Wildeck brand name product and did not take exception in its bid to any of the salient characteristics in the IFB, the agency properly accepted Burgos's bid as responsive.

The protest is denied.

\s\ Christine S. Melody
for Robert P. Murphy
General Counsel