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DECISION



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

FILE: B-188827

DATE: December 28, 1977

MATTER OF: Scientific Communications, Inc.

DIGEST:

1. Brand name or equal IFB was ineffective to meet agency's responsibility to assure maximum possible competition because solicitation could be construed as requiring nonessential configurations of system's subassemblies. In view of urgent need for experimental system, resolicitation of requirement is not recommended. However, follow-on requirements for similar equipment will be open to competition.
2. Claim for bid preparation costs is denied where claimant believed solicitation excluded it from the competition and did not submit bid.

Scientific Communications, Inc. (SCI) protests the contract award by the Department of Commerce, Office of Telecommunications (Commerce) under IFB OT-3-77, for a computer controlled microwave surveillance receiving system. The solicitation sought bids on a brand-name or equal basis, identifying the Watkins-Johnson WJ-1740 receiver system as the designated brand-name product. Award was made to Watkins-Johnson, the sole bidder.

SCI maintains that although it could meet the Government's requirements, it was prevented from bidding by the terms of the solicitation, which it views as restricting the procurement to the brand-name manufacturer. The Government appears to be requiring a system with exactly the same complement of components utilized in the brand name product. The protester believes that its system meets the Government's essential requirements but is nonresponsive because its components do not correspond to those in the brand name item.

For its part, Commerce explains that this procurement was solicited on a brand name or equal basis because equipment was urgently needed and sufficient time was not available to

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permit development of a performance specification. According to the project leader, the solicitation was issued "to establish that there is or is not another system available * * * which will do an equivalent or better job at a lower cost to the Government."

The bid schedule lists a single item, a "Receiver system, Watkins-Johnson (WJ) Model WJ-1740, or equal, with the following items and units," listing 16 separate designated entries as subitems. The subitems consist of 18 specifically identified as Watkins-Johnson WJ-1740 component subassemblies. Space on the bid form was provided to indicate the price bid for each subassembly, or to identify and provide a price for an equal and corresponding subassembly. Bidders were not required to bid a total package price, per se, and no space was provided for that purpose.

Although the schedule provided spaces in which bidders might identify equal subassemblies, it provided no means for a bidder to indicate that different divisions or combinations of subassemblies were proposed as equal to the basic item or system being procured. Moreover, the technical specifications were similarly structured. The separate identity of each subassembly was maintained throughout the specifications. For example, the demodulator and power supply requirement discussed in paragraph 3.4 of the specifications was identified as relating to an "MD-103/WJ-1740 or equivalent and PP-100/WJ-1740 or equivalent."

In a report to our Office, the Department of Commerce concedes that its requirement could be satisfied by different configurations of subassemblies. In its view, the divisions of work corresponding to the component subassemblies of the Watkins-Johnson unit should not be viewed as establishing salient characteristics, but rather, as stated in a memorandum prepared by the project leader, were intended to define "the baseline of equivalency desired from other manufacturers."

In our opinion, classification of brand name components by specifying, listing and pricing them separately may import, without more, a division of work which could be viewed as salient. An offer of an equal product which does not purport

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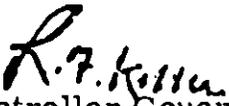
to satisfy all essential requirements must be rejected as non-responsive. Pauli & Griffin Co., B-183797, March 16, 1976, 76-1 CPD 178. Moreover, a solicitation imposing requirements which do not reflect any actual need of the Government limits competition unnecessarily and is unduly restrictive. Inasmuch as the solicitation may reasonably be construed as specifying a system with the same complement of components as the brand name system, we think the solicitation is defective.

The protester also alleges that the solicitation fails to provide sufficient information concerning the requirements for connecting cable and software design to permit the submission of a firm bid. Inasmuch as we have sustained the protest on other grounds, it is unnecessary to resolve these additional objections to the purchase description.

In view of the urgent need for a prototype system, we have concluded that remedial corrective action would be inappropriate. As to future needs, the Air Force has advised us that it expects to make additional purchases and that the products of all interested offerors will be considered for award provided such products have the demonstrated ability to satisfy necessary functional and dimensional parameters.

In this connection, we point out that the Government's requirements should be expressed as broadly as possible, consistent with needs, so as to maximize competition.

Finally, SCI maintains that it should be allowed bid preparation costs. Payment of bid preparation costs is permitted where the Government has breached a promise to potential offerors that their bids will be fairly considered and it can be shown that an offeror relied on that promise and was injured by its breach. Sigma Data Computing Corp., B-186932, September 22, 1977, 77-2 CPD ____. Even if the protester incurred bid preparation costs, it failed to submit a bid because it believed that the solicitation excluded it from the competition. In such circumstances, the protester is not entitled to recover any preparation costs it may have incurred.


Acting Comptroller General
of the United States