



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: PRO/DES, Inc.

File: B-256541

Date: June 30, 1994

Michael A. Cook for the protester.
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the agency.
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of the decision.

DIGEST

Under a brand name or equal solicitation, a bid offering an alternative product as an "equal" was properly rejected as nonresponsive where the descriptive literature furnished with the bid did not show that the offered product was equal to the brand name product solicited, and where unsolicited samples provided with the bid were not clearly identified to permit the agency to conclude that they were equal to the brand name product.

DECISION

PRO/DES, Inc. protests the rejection of its bid under invitation for bids (IFB) No. 6FEP-CO-BO-930021-S, issued by the General Services Administration (GSA) for caulking tools. GSA rejected PRO/DES's bid because the bid documents did not clearly show that PRO/DES was offering a product "equal" to the brand name product identified in the IFB.

We deny the protest.

The IFB anticipated award of one or more requirements contracts for 26 different items, only one of which is at issue here--i.e., a caulking gun, item No. 9 on the bid schedule, described as Semco Division, part No. 221830 or equal. The IFB's bid schedule included a space for bidders to enter their unit price for item No. 9, and included three additional spaces to indicate the manufacturer, brand name and part number of any caulk gun offered as an equal to the Semco number 221830 caulk gun. In addition, the IFB required bidders offering "equal" products to provide adequate descriptive literature for the agency to decide whether the products offered were, in fact, equal to the

brand name product. Further, the IFB warned that failure to provide such information would result in rejection of the bid as nonresponsive.

Five bidders submitted prices for the caulk gun, with PRO/DES submitting the lowest bid of \$24.95 per gun.¹ Although PRO/DES entered its unit price on the bid schedule, it failed to make any entry showing the manufacturer's name, brand name and part number. PRO/DES did, however, include with its bid certain supplemental descriptive information and two samples. The descriptive information took the form of a short letter and a price list. In the letter, PRO/DES stated:

"Please find enclosed a copy of our product catalog. Our model #162R is the same as the Semco model #850. In fact, we manufacture the Semco model #850.

"Also, enclosed is a sample of our model #162R minus the six ounce metal retainer. However, our quoted price of item #9 includes the six ounce metal retainer."

The price list included with the bid was a one-sheet listing of part numbers from Kenmar Products, captioned:

"Professional Quality Caulking Guns
Specialty Hand & Air Dispensing Guns
and Accessories."

This list of part numbers was marked to indicate Kenmar item number K162R2, model #162-R.

PRO/DES also included two sample caulk guns with its bid, which it has provided to our Office as part of this protest. One of the guns is marked "Semco" but does not include a model number; the other gun is marked "Kenmar" and bears the marking "#14652."²

GSA concluded that the PRO/DES bid was nonresponsive because the bid did not establish that the offered item--the PRO/DES model #162R--was "equal" to the item sought by the IFB--the

¹Bidders were permitted to submit a bid for any or all of the items on the bid schedule. PRO/DES bid on item Nos. 1, 2, and 9.

²Although the identity of the PRO/DES sample is not at issue here, GSA's agency report states that the Kenmar caulking gun is marked "162." Our review of the gun, however, shows that the gun is marked "#14652."

Semco number 221830 caulk gun. After GSA denied PRO/DES's agency-level protest, PRO/DES filed a protest with our Office. According to PRO/DES, GSA should have known that the "Semco 850" referenced in information provided with the bid is the same item as the Semco 221830 caulk gun, or alternatively, GSA should have recognized that the caulk guns were equal by inspecting the Semco caulk gun submitted as a sample. From our review of the record, including the IFB, the bid, the descriptive information provided with the bid, and the two samples, we find that PRO/DES's bid was not responsive to the solicitation and was properly rejected.

To be responsive, a bid must constitute an unequivocal offer to provide the exact thing called for in the solicitation such that acceptance of the bid will bind the contractor in accordance with the material terms and conditions of the solicitation. Hagglunds Prinoth, B-238244, Apr. 15, 1990, 90-1 CPD ¶ 385. The same is true for bids submitted in response to a brand name or equal solicitation--the item offered must conform to the salient characteristics of the brand name item. Innovative Refrigeration Concepts, B-252357, June 9, 1993, 93-1 CPD ¶ 448. Where, as here, descriptive literature is required to establish a bid's conformance with the specifications, and bidders are so cautioned, the bid must be rejected if the literature submitted fails to show the conformance of the offered product. JoaQuin Mfg. Corp., B-228515, Jan. 11, 1988, 88-1 CPD ¶ 15.

Despite the protester's contentions, this bid was ambiguous in several ways, and thus, had to be rejected. First, the PRO/DES bid, on its face, does not offer an "equal" item. Rather, the protester entered only a unit price for the brand name product and failed to complete the bid schedule to identify the alternative offered. Nonetheless, the agency concluded that PRO/DES was offering an "equal" product because of the information that accompanied its bid--i.e., the descriptive literature and the samples.

As explained above, the PRO/DES bid was accompanied by a letter stating that the PRO/DES model "#162R is the same as the Semco model #850." Presumably, the agency interpreted this language as a promise to provide the PRO/DES model #162R, despite the failure of the bid to indicate an intention to offer an "equal" product, and despite the lack of promissory language in the letter.³ In addition, the

³Although the agency based its decision to reject this bid on its inability to ascertain whether PRO/DES was offering a product equal to the one solicited, the language of the letter provided with the bid does not reflect a promise to
(continued...)

letter advises the agency that PRO/DES is enclosing a sample of "our model #162R minus the six ounce metal retainer," but the letter does not mention the second sample provided with the bid. Also, none of the information provided by the bidder informs the agency that the Semco model #850 is equal to the Semco part identified in the solicitation, Semco 221830.

While the protester contends that it could have resolved any of these questions if asked, the agency could not permit PRO/DES to explain its bid after bid opening, since bid responsiveness must generally be ascertained from the bid documents themselves, not from explanations or clarifications provided by the bidder after bids have been opened and bid prices exposed. Crash Rescue Equip. Serv., Inc., B-245653, Jan. 16, 1992, 92-1 CPD ¶ 85. We also fail to see how the two samples clarified the bid. Even if the agency had recognized that the Semco sample was identical to the product solicited, the bid documents offer a different Semco product--and no marking on the sample, or explanation in the letter, linked the Semco sample to the Semco product number identified in the IFB.⁴ Finally, we note that even if PRO/DES is correct in its claim that the two Semco numbers refer to the same product--and we have no

³(...continued)

provide the PRO/DES model #162R. Rather, the letter merely states that the PRO/DES model is equal to the Semco model #850. As discussed below, the letter also provides no information to allow the agency to determine that the Semco 850 is the same as Semco part No. 221830.

⁴PRO/DES does not explain why the agency should have known that the "Semco 850" was the same as Semco part No. 221830. This IFB also sought bids for Semco part Nos. 220329 (item No. 6), 220317 (item No. 7), 226358 (item No. 8), 220544 (item No. 10), 220540 (item No. 11), 220574 (item No. 12), 220572 (item No. 13), and 220559 (item No. 14). Given that several Semco parts were covered by this solicitation, that the Semco sample provided by PRO/DES had no part number, that the letter attached to the bid made no mention of any Semco sample, and that other item Nos.--such as item Nos. 1 and 2--were also for caulk guns, we find that this bid was irredeemably ambiguous.

information to the contrary--bid rejection is required when, as here, the literature submitted with the bid does not clearly show conformance with the IFB requirements.

Innovative Refrigeration Concepts, supra; Alternate Power and Energy Corp., B-228746, Nov. 3, 1987, 87-2 CPD ¶ 440.

The protest is denied.

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