



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

B-178720 (1)

August 16, 1973

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Minuteman Laboratories, Incorporated
916 Main Street
Acton, Massachusetts 01720

Attention: Mr. Jerome N. Nihen
President

Gentlemen:

Further reference is made to your telegram of May 23, 1973, and letter of May 25, 1973, protesting against the rejection of your bid under invitation for bids (IFB) No. 1-64-3586, issued by the National Aeronautics and Space Administration (NASA), Langley Research Center, Hampton, Virginia, on March 28, 1973.

The solicitation was issued for the procurement of one Vacuum UV Monochromator, in accordance with McPherson Instrument Corporation Model 235 (t) or equal. Pursuant to NASA Procurement Regulation (NASA PR) 1.1206 (Purchase Descriptions), the following clause, in pertinent part, was referenced in the Schedule of the invitation for bids as being attached for inclusion in the resulting contract:

"BRAND NAME OR EQUAL (JUNE 1966)

* * * * *

" * * * Bids offering 'equal' products will be considered for award if such products are clearly identified in the bids and are determined by the Government to be equal in all material respects to the brand name products referenced in the Invitation for Bids.

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"(c)(1) If the bidder proposes to furnish an 'equal' product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in

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the bid. 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 procurement office 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 procurement office to (i) determine whether the product offered meets the requirements 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 procurement office. (Underlining supplied.)

On April 18, 1973, the bids were opened and your firm submitted the low bid of \$12,925 while McPherson Instrument Corporation bid \$16,350. However, your bid on Minuteman Model No. 305-EI was rejected as nonresponsive because you did not submit the descriptive literature called for in the above clause and such information was not reasonably available to the procuring activity to determine whether the item bid on was equal to the specified brand name. McPherson received award of the contract.

You protest that action to this Office, stating that your bid was prejudiced by NASA's omission of the "brand name or equal" clause from your bid set. You therefore contend that the contract should have been awarded to Minuteman Laboratories, Incorporated, the low bidder.

The record shows that you bid on a product other than the brand name product specified in the IFB, and failed to supply the Langley Research Center with the required descriptive data. This Office has

B-170720

consistently held that the failure of a bidder to submit with his bid all necessary information to enable the procurement officials involved to determine whether the substitute he offers would be equal in all respects to the named brand renders his bid nonresponsive. See B-176207, January 24, 1973. Although the letter transmitting your bid included the statement that no exceptions to the specifications were taken, the failure to furnish descriptive literature is not overcome by a blanket offer to comply with the specifications. 50 Comp. Gen. 193(1970).

While the "brand name or equal" clause itself may not have been included in your bid set, we have held that the omission of documents referred to in the bid Schedule as "attached" is not fatal where the omitted document is accessible to the public because a reasonably prudent bidder is responsible for securing the document upon noting its omission. See 48 Comp. Gen. 757 (1959). Although the Government should make every effort to ensure that bidders timely receive complete bid sets, the fact that there may have been a failure to provide a complete bid set in a particular case does not warrant acceptance of a nonresponsive bid. See 40 Comp. Gen. 126 (1960).

You also contend that some of the procurements of this item should be set aside for award to verified small businesses. The record indicates that both Minuteman Laboratories and NASA are in agreement that only two companies regularly manufacture this type of equipment, and that, of the two, Minuteman Laboratories is the only company that qualifies as a small business.

As only one "small business" regularly manufactures this item NASA correctly points out that neither a total nor partial set-aside is appropriate under applicable regulations, NASA FR 1.706-5(a) and 1.706-6(a), because bids would not be obtained from a sufficient number of responsible small business concerns to ensure that award would be made at a reasonable price.

For the foregoing reasons your protest is denied.

However, in our letter of today to the Administrator of NASA, copy enclosed, we are pointing out our concern as to the propriety of

B-178720

the use of a "brand name or equal" purchase description in future procurements of this item.

Sincerely yours,

PAUL G. DEMBLING
For the Comptroller General
of the United States