



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: SOG Specialty Knives, Inc.

File: B-281877

Date: April 12, 1999

Spencer Frazer for the protester.

W. S. Spotswood, Jr., for Fiskars Inc., an intervenor.

Adele Ross Vine, Esq., General Services Administration, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where an invitation for bids required adequate descriptive literature to determine whether the offered items conform to the technical requirements and bidders were advised that failure to do so would result in rejection of their bids, protester's bid offering equivalent items was properly rejected as nonresponsive where the descriptive information furnished with the bid did not show that the offered items were equal to the brand name items solicited.

DECISION

SOG Specialty Knives, Inc. (SOG) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 6FES-G3-980158-S, issued by the General Services Administration on a brand name or equal basis, for multi-purpose pocket survival knives (tools). GSA rejected SOG's bid because the descriptive literature it submitted did not establish that SOG 's offered tools were equal to the brand name.

We deny the protest.

The IFB contemplated award on an item by item basis for eight different tools, only three of which are at issue here--item numbers 3, 4, and 5, described as Fiskars/Gerber part numbers 07500G, 07505G, and 07520G, or equal. IFB, Item Purchase Description (IPD) at 2-7. As relevant here, the IFB required that for item numbers 3 and 4, the tool must have a non-glare satin finish and a plier head that shall retract and slide into the handle. Item number 5 required the same salient characteristics as item number 3 except that the tool was required to have a black oxide finish. IFB, IPD at 3-4. Bidders offering other than brand name items were required to submit with their bids adequate descriptive literature for the agency to determine the equality of their offered items and the items had to meet each of the listed characteristics set forth in the IPD. Bidders were also advised that failure to submit the required descriptive literature would result in the rejection of the bid as nonresponsive. IFB § B.1, at 7.

Fourteen bids were received by the November 17, 1998 bid opening date. Agency Report, exh. 14, Abstract of Offers. As relevant to this protest, SOG offered equivalent tools for item numbers 3, 4, and 5 (SOG part numbers S60-GSA-N, S60-GSA-L, and B60-GSA-N) and included certain descriptive literature with its bid.¹ The descriptive literature took the form of a short letter and seven pages of drawings of the items with limited information typed/printed on each of the seven pages (one page addressed two items not protested). Agency Report, exh. 13, SOG Descriptive Literature. After completing a technical review of SOG's offered items, GSA's supply specialist advised the contracting officer that the offered products for item numbers 3, 4, and 5 were not equal to the brand name model because the tools do not have a retractable plier head as required by the solicitation. In addition, for item numbers 3 and 4, the supply specialist reported that, based on the protester's limited descriptive literature, he was unable to determine whether the protester's offered product complied with the non-glare satin finish requirement. Agency Report, exh. 16, Technical Evaluation Report, Dec. 14, 1998, at 1st and 2nd unnumbered pages. Thus, the contracting officer rejected the protester's bid as nonresponsive because its descriptive literature failed to show that the offered items--SOG part numbers S60-GSA-N, S60-GSA-L, and B60-GSA-N--satisfied the salient characteristics in the IFB. This protest followed.

SOG challenges the agency's determination that the tools bid for item numbers 3, 4, and 5 were not equal to the brand name, essentially contending that the offered products satisfied the salient characteristics at issue. Protester's Comments at 2nd and 3rd unnumbered pages. From our review of the record, including the IFB, the bid, and the descriptive information provided with the bid, we find that the agency reasonably determined that SOG's bid for items 3, 4, and 5 was not responsive to the solicitation.

To be responsive under a brand name or equal IFB, bids offering equal products must conform to the salient characteristics of the brand name equipment 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 Med. Sys., Inc., B-258945, Feb. 13, 1995, 95-1 CPD ¶ 67 at 2. When the descriptive literature submitted with the bid fails to establish that the offered products would meet all of the listed salient characteristics, the bid must be rejected as nonresponsive. Infrared Techs. Corp., B-255709, Mar. 23, 1994, 94-1 CPD ¶ 212 at 3-4; AZTEK, Inc., B-229897, Mar. 25, 1988, 88-1 CPD ¶ 308 at 3.

¹Bidders were permitted to submit a bid for any or all of the items on the bid schedule. IFB §§ 52.212-1(h), at 34, M-FSS-300-A, at 39. SOG submitted the apparent low bid for item numbers 1, 2, 3, 4, and 5; its offered tools for item numbers 1 and 2 were determined to be equivalent to the brand name and model specified for these two items. Agency Report, exh. 14, Abstract of Offers, exh. 6.

The record shows that the agency's primary concern with SOG's offered product was that the tools do not have a plier head that retracts into the handle. In his evaluation of the SOG products, the supply specialist noted:

The plier head remains stationary and handles fold around the plier head. The folding action of the tools for items 3, 4 and 5 shown by SOG in [their] literature is the same action shown in SOG's items S44-M and B44-M submitted for item numbers 1 and 2 that have already been determined as equal. If the same folding action is used for items 1 and 2 as a folding tool, it cannot be a retractable item for item 3, 4, and 5. They do not retract into the handle, which disqualifies them as being an equal to Gerber items. As stated in my [previous] message with the dictionary definition of retractable and folding, SOG knife is clearly a folding tool and not retractable. SOG even states in their literature furnished with their bid that their items are a "folding plier tool."

The industry standard as established for industry in their product catalogs clearly shows that "retractable" means items sliding into another object. Statements in industries catalogs such as utility knives with blades that retract into the handle, measuring tapes with tape blades that retract into the case, crowd control barriers with retractable webbing that retracts into the pole or base, or ball point pens where the point retracts into the pen case clearly indicates what industry defines as retractable.

The industry catalogs also [show] folding items in product catalogs, such as feeler gages where the blades fold back in the case, and knives that have blades that fold into the handle. There is clearly a distinct difference between retractable and folding. The SOG tools are clearly a folding tool and do not have a retractable plier head.

Agency Report, exh. 16, Technical Evaluation Report, Dec. 14, 1998, at 1st and 2nd unnumbered pages.

The protester disputes these findings on the basis that the technical drawings included in its bid show that the SOG powerlock "uses five pivots that allow the plier head to retract and slide into the handles as they are rotated around it. . . . As the handles rotate they force the plier head to retract inward and downward and finally slide into the handles." Protest at 2nd unnumbered page. In its view, had the agency focused on the "motion of the entire tool and its parts," the agency would have determined that the SOG plier head retracts and slides into the handle. In any event, the protester explains that use of the phrase "folding plier tool" in its descriptive literature was not intended to limit or negate the fact that its "plier head

functions in a complex geared action of folding, retracting, sliding, drawing back, etc." Id.²

Notwithstanding SOG's assertions of compliance with the plier head and non-glare satin finish requirements, we agree with the agency that SOG's bid documents did not demonstrate that its offered equivalent products met the solicitation requirements. As previously stated, the descriptive literature provided with the SOG bid consisted simply of seven pages of drawings with typewritten information which essentially repeated the salient characteristics listed in the solicitation.

For example, one of the protester's drawings for item numbers 3, 4, and 5 merely depicts three views of the offered tool with the following words typed below the third view: "[P]lier head retracts and slides into handle as the handles rotate around it. Retract is defined as 'To draw back or in' as per Webster dictionary." Agency Report, exh. 13, SOG Descriptive Literature, at 4th unnumbered page. The record shows that for item numbers 3, 4, and 5, the IPD requirements sought a tool with a plier head that retracts and slides into the handle rather than a folding tool, which the agency was buying under other item numbers. The information that accompanied SOG's bid does not establish that SOG was offering a product equal to the one solicited. Rather, the products at issue here were described as a "folding plier tool," and the drawings do not indicate otherwise. In fact, the drawings show

²SOG points out that prior to submitting its bid, the contracting officer had responded to its inquiries regarding the restrictive nature of the requirement that the plier head must retract and slide into the handle. Protester's Comments at 1st, 2nd, and 3rd, unnumbered pages. According to the protester, the contracting officer's response refined and clarified this IPD requirement since she stated:

The words, "Plier head shall retract and slide into the handle" is not a proprietary statement. The words "retract and slide" are common verbs used in the context to describe what is expected, in regard to the function of the tool. How the knife folds out or in, how they slide out or retract and slide into the handle is not a concern, as long as it performs that function. No specific retractable plier head system is stated in the IPD's.

Agency Report, exh. 11, Letter from Contracting Officer to Protester 1 (Nov. 13, 1998).

To the extent the protester alleges that this response indicates that the plier head requirement would be read in a manner that would render SOG's products acceptable, we disagree. We think the response makes clear that the IPD did not specify a particular approach to satisfying the requirement for a plier head that retracts and slides into the handle--but it did not waive or modify that requirement.

that the plier head is stationary and that the handles fold around the plier head. Thus, SOG's conclusory statement--that the plier head retracts and slides into the handle--was either inconsistent with, or not supported by, the information furnished with the protester's bid.

As to the type of finish for item numbers 3 and 4, the protester's descriptive literature contained the following typed statements: "S60-GSA-N [item number 3] standard finish [n]ylon pouch. S60-GSA-L [item number 4] standard finish [l]leather pouch." Agency Report, exh. 13, SOG Descriptive Literature, at 3rd unnumbered page. Clearly, this information provided no basis for the agency to determine whether SOG's "standard finish" would satisfy the solicitation's non-glare satin finish requirement for item numbers 3 and 4.

While the protester contends that the agency could have resolved any uncertainties regarding the technical equivalence of its offered product by asking for samples, bid responsiveness must generally be ascertained from the bid documents themselves, not from explanations or samples provided by the bidder after bids have been opened and bid prices exposed. See Crash Rescue Equip. Serv., Inc., B-245653, Jan. 16, 1992, 92-1 CPD ¶ 85 at 3. Accordingly, we conclude that the agency reasonably rejected SOG's bid offering an equal product for item numbers 3, 4, and 5 as nonresponsive based its determination, as explained above, that the descriptive literature submitted with the bid did not clearly show conformance with the IFB requirements.

To the extent SOG argues that the plier head requirement is unduly restrictive and alleges that the requirement describes patented technology that is proprietary to Fiskars/Gerber, 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)(1) (1998). Even if the protester's prebid inquiries to the contracting officer could be considered an agency-level protest, the contracting officer's November 13 response rejected that claim because the agency stated that it did not consider the plier head requirement to be restrictive or unduly favoring Fiskars/Gerber or its distributors. Since the

protester did not file a subsequent protest with our Office within 10 days after its receipt of the agency's November 13 letter, this protest ground is untimely and we will not consider SOG's allegations in this regard.³ 4 C.F.R. § 21.2(a)(3).

The protest is denied.

Comptroller General
of the United States

³We note, however, that SOG's challenge to the requirement for a tool with a retracting head, separate from the need for a folding tool, appears to be refuted by the agency which explains that the two products "are different in function and a customer that is in a tight spot when working on a vehicle, or other mechanism that has close quarters may not have the room to unfold the SOG knife to use the pliers. The tool that the government has required . . . is pliers that can be used without completely unfolding the handle and . . . does not take up as much room in tight places." Agency Report, exh. 18, at 2nd unnumbered page.