

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

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FILE: B-208554**DATE:** March 7, 1983**MATTER OF:** Rack Engineering Company**DIGEST:**

1. Each procurement is a separate transaction and the action taken on any one procurement does not govern the conduct of all similar procurements. Prior acceptance of a nonconforming product does not require continued acceptance under other solicitations.
2. Drafting of specifications to meet Government's minimum needs and determination whether items offered meet specifications are functions of procuring agency. Any complaint concerning specification should have been filed prior to bid opening under 4 C.F.R. § 21.2(b)(1) (1982).
3. Rejection of low bid as nonresponsive to brand name or equal solicitation is proper where descriptive literature does not substantiate bidder's compliance with salient characteristics.

Rack Engineering Company (Rack) protests the award of a contract to Stanley-Vidmar under invitation for bids (IFB) No. DAAG38-82-B-0055 issued by the Department of the Army, Tobyhanna Depot (Army). Rack contends that the Army was incorrect in determining that its bid was nonresponsive. For the reasons stated below, we deny the protest.

The solicitation was for a Material Handling Control System, Stanley Vidmar Stak System, or equal, and provided a listing of physical and functional characteristics determined essential to the needs of the Government. Rack submitted the low bid, but the Army found the bid to be nonresponsive and awarded the contract to Stanley-Vidmar, the next low bidder.

The solicitation notified contractors who offered products on an "equal" basis to furnish with their bids sufficient descriptive material to enable the Army to determine whether the offered system satisfied the listed

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salient characteristics. Rack provided the Army with an informational brochure, "Rackmaster and Movable Shelf Rack Brochure and Drawing 54624," in addition to the information contained in its bid. The Army evaluated this material and also examined a similar Rackmaster system located at the Tobyhanna Depot.

After analysis, the Army rejected Rack's bid, finding that neither the descriptive material nor the onsite inspection conclusively established that the offered Rackmaster system met all the necessary requirements. Specifically, the Army found that the Rackmaster did not meet the requirement for a free fall prevention device to act as a stop lock mechanism in the event of a chain break and did not meet the manual horizontal movement maximum pressure requirements of the mast assembly. Rack disputes these findings.

Rack argues that it provided a reasonable alternative to the "free fall safety device" by offering on its system a heavier hoist. As support that its system was an equal product, Rack pointed to previous contract awards it has received under similar solicitations. While we are aware that the Army had previously accepted the Rackmaster system on an "equal" basis under solicitations requiring a "free fall safety device," this does not require that procurement officials continue to accept a nonconforming product under current solicitations. Patton Electric Company, Inc., B-194565, August 27, 1979, 79-2 CPD 154. Each procurement is a separate transaction, and action taken on any one procurement does not govern the conduct of all similar procurements. B-157112, September 28, 1965. Therefore, Rack must support its position that it offers a reasonable alternative on the record here.

Rack alleges that doubling the hoist size provides all the necessary safety features. This argument is based on the assumption that the "free fall safety device" exceeds the minimum needs of the Army. Rack claims that the possibility of a chain break is remote and, even if one occurred, the operator of a Rackmaster system would be adequately protected behind the caging system and mast. Therefore, it is Rack's position that a "free fall safety device" is not an essential feature. Further, Rack contends that the "free fall safety device" is a patented and proprietary mechanism

installed in the Stanley-Vidmar system. Rack also asserts that the Army had not standardized or adequately tested the device before the award was made.

The Army indicates that prior to the solicitation, it determined that a stop lock mechanism was necessary to prevent serious injury from a chain break. It incorporated this requirement into the solicitation as a salient characteristic. The Army evaluated the literature Rack submitted with its bid and conducted onsite testing and determined that doubling the size of the hoist did not satisfy the "free fall safety device" requirement. We will not disturb this finding.

Once an agency has established prima facie support for its contention that the specifications which the protester challenges are reasonably related to its needs, the burden of proof lies with the protester to show that the Government's insistence upon them is clearly unreasonable. Security Assistance Forces & Equipment oHG, B-202275, August 5, 1981, 81-2 CPD 97.

Moreover, the determination of the minimum needs of an agency and the methods of accommodating them are properly the responsibility of the agency. Sogitec, Incorporated, B-196158, January 24, 1980, 80-1 CPD 70; Maresmont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181. Here, the Army believed the "free fall safety device" was essential to the safety of its worker, while Rack contends that the possibility of a chain break was so small that a stop lock mechanism was not necessary. While Rack stated that its system met all industry safety standards, it has not shown, on this record, that the Army's insistence on the specific safety feature was without a rational basis.

Rack's bid failed to comply with the required specification. The Rackmaster was not equipped with a stop lock mechanism. Therefore, since the solicitation required the "free fall safety device," the Army was correct in finding Rack's bid nonresponsive. Further, any objection Rack had regarding the "free fall safety device" specification should have been filed before bid opening. 4 C.F.R. § 21.2(b)(1) (1982).

Rack's bid was also determined to be nonresponsive on the basis that it failed to meet the manual horizontal movement requirement. Rack argues that the reason its Rackmaster system was found not to be in compliance with this requirement was because its system at the Tobyhanna Depot had been improperly installed by the Army. Rack indicated that at other military installations, where its system was properly installed, there were no problems.

The Army indicates that the manual horizontal movement requirement was added as a salient feature to the solicitation because the Rackmaster system located at Tobyhanna Depot was difficult to move. The Army disputes Rack's contention that the Rackmaster was improperly installed and that this was the reason for the problem with the system. The Army did state that a Rack system located at the Watervliet Arsenal was examined and found not to have similar difficulties. However, because the Watervliet system was smaller than the system at Tobyhanna, the lack of a problem may have been due to size. Therefore, the Army determined the examinations to be inconclusive. In addition, the Army indicated that Rack's descriptive material did not substantiate its claim of compliance.

Where, as here, the procuring activity in a brand name or equal IFB identifies specific salient characteristics which are to be provided and requires descriptive data to establish that the specifications are met, the responsiveness of the "equal" bid depends upon the completeness of the information submitted or reasonably available. It is not enough that the bidder believes his product is equal or makes a blanket statement that all salient characteristics are met. The data furnished must permit the Government to establish that each of the specified salient characteristics of the brand name product is available equally in the product bid. Sutron Corporation, B-205082, January 29, 1982, 82-1 CPD 69.

Rack did not meet this standard of proof. No showing was made that the agency's determination that Rack's data was insufficient was erroneous or arbitrary. The descriptive material Rack provided was found to be inconclusive and the inspection performed by the Army indicated that Rack's system was not an "equal" product. Therefore, we find that the Army was correct in determining Rack's bid to be nonresponsive.

The protest is denied.

for *Milton J. Fowler*
Comptroller General
of the United States