

**DECISION**



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

**FILE:** B-213294; B-213294.2 **DATE:** April 2, 1984

**MATTER OF:** Jarrett S. Blankenship Co.

**DIGEST:**

1. Protester's bid which offered to furnish other than the exact product called for in the solicitation was properly rejected as non-responsive. Although subsequent to the rejection of the bid the agency determined that the solicitation specifications were overly restrictive, the agency may not make award to the protester under that solicitation because it is improper to award a contract on a basis other than that upon which bids were solicited.
2. A disappointed bidder is not entitled to recovery of bid preparation costs where its bid properly was rejected as nonresponsive.
3. There is no legal basis to pay anticipated profit to an unsuccessful bidder.

Jarrett S. Blankenship Co. protests the rejection of its bid as nonresponsive by the Naval Surface Weapons Center under invitation for bids (IFB) No. N60921-83-B-A200 (IFB -A200) and the subsequent cancellation of the solicitation and resolicitation of the requirement. Blankenship also claims lost profit and bid preparation costs. We deny the protest and the claim.

IFB -A200, issued on July 5, 1983, called for bids for an air cooled water chiller. The Navy received five bids on the August 11 opening date. Blankenship's bid was rejected as nonresponsive because the descriptive literature included with its bid revealed that the chiller offered contained six compressors instead of two compressors with completely independent refrigerant circuits as required by the specifications. Three of the other bids were rejected because they failed to include the required descriptive literature while the

remaining bid was rejected because it did not include required information regarding servicing of equipment. Since the agency received no bids it considered responsive, it canceled the solicitation. Blankenship then protested rejection of its bid to the Navy and subsequently to this Office.

Meanwhile, the agency conducted a review of its specifications and concluded that some changes were appropriate, including relaxation of the requirement for two compressors. On the basis of this review, the contracting officer issued IFB N60921-84-B-A006 (IFB -A006) with revised specifications. Under this solicitation, equipment with two compressor banks consisting of from one to three compressors each would be acceptable.

In response to IFB -A006, the Navy received bids from Blankenship and two other firms which had bid under IFB -A200. The agency rejected all three bids as nonresponsive. Blankenship's bid (the highest received) was rejected because the unit it offered contained a baked enamel finish instead of the required chlorinated vinyl lacquer finish and included a 6-step capacity control rather than the required 8-step capacity control. None of the firms protested the rejection of its bids.

Since all bids received under IFB -A006 were also non-responsive, the Navy revised the specifications again and resolicited the requirement under request for proposals (RFP) No. N60921-84-R-A071. The agency received three proposals in response to the RFP and awarded a contract to the Trane Company as the lowest acceptable offeror. The low offer was rejected as unacceptable; Blankenship's offer was the highest of the three received.

Blankenship protests the cancellation of the original solicitation on the ground that its bid was responsive and should have been accepted. In this regard, the protester maintains that its proposed equipment would operate more efficiently than the two compressor units described in the specifications. Blankenship asks that it be awarded the contract based on its bid submitted under IFB -A200 or, alternatively, that it be permitted to recover \$2,000, representing its lost profit and bid preparation expenses.

The regulations provide that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. Defense Acquisition Regulation § 2-404.1(a). To be

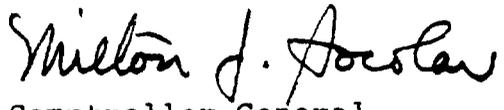
responsive, a bid as submitted must represent an unequivocal offer to perform the exact thing called for in the solicitation such that acceptance of the bid will bind the contractor to perform in accordance with the solicitation's material terms and conditions. Edw. Kocharian & Company, Inc., 58 Comp. Gen. 214 (1979), 79-1 CPD 20. Thus, a bid must be rejected if it indicates that the offered product will not comply with the specifications. Star-Line Enterprises, Inc., B-210732, October 12, 1983, 83-2 CPD 450. Since Blankenship's bid under IFB -A200 offered a unit with six compressors instead of the two compressors required, it failed to meet the specifications and, even if the proposed unit would operate more efficiently as Blankenship maintains, was properly rejected.

Although subsequent to cancellation of IFB -A200 the Navy decided to relax the specifications to allow consideration of the type of unit offered by Blankenship, that firm's bid under the canceled solicitation nevertheless was nonresponsive and could not later be accepted for award. Acceptance of Blankenship's bid under IFB -A200 would have resulted in an award on a basis different from that advertised and would be unfair to other potential bidders who did not bid on the solicitation because their equipment was excluded by the specifications. See Charles J. Dispenza & Associates, B-205837, May 3, 1982, 82-1 CPD 411.

Since all bids received were nonresponsive, the Navy properly canceled IFB -A200 and resolicited the requirement. Gulf & Western Healthcare, Inc., B-210466, August 29, 1983, 83-2 CPD 248.

In view of our conclusion, Blankenship's claim for bid preparation costs is denied. American Dredging Company--Reconsideration, B-201687, June 17, 1981, 81-1 CPD 504. Also, there exists no legal basis for allowing an unsuccessful bidder to recover anticipated profit. Lamson Division of Diebold, Incorporated, B-196029.3, August 8, 1980, 80-2 CPD 101.

The protest and claim are denied.

for   
Comptroller General  
of the United States