

**DECISION**



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

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Konovitz  
30489

**FILE:** B-216645 **DATE:** February 21, 1985  
**MATTER OF:** G. A. Braun, Incorporated

**DIGEST:**

1. Bid proposing equal product in response to brand name or equal solicitation is nonresponsive because it failed to include sufficient descriptive data to establish that product met one of the salient characteristics specified in the solicitation.
2. Contention that a specification for brand name or equal product unduly restricted competition will not be considered since it involves an alleged defect apparent from the face of the solicitation and the protest was not filed prior to bid opening as required by Bid Protest Procedures.
3. Protest allegation is untimely where basis for allegation could have been discovered at time of award but protest was not filed until 3 months after award.
4. Allegation of collusion among bidders offering brand name product in brand name or equal procurement is denied where no specific evidence is submitted to support allegation. However, if protester has specific information it should be presented to the contracting officer for possible forwarding to the Department of Justice in accordance with the Federal Acquisition Regulation.

G. A. Braun, Incorporated (Braun), protests the rejection of its low bid in response to invitation for bids (IFB) No. 279-84-0026B issued by the Department of Health and Human Services (HHS) for a Jensen laundry flatwork finishing system or equal.

We deny the protest in part and dismiss it in part.

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Braun offered a Braun brand laundry flatwork finishing system as an equal product. Braun's bid was rejected after HHS determined that the descriptive data submitted with Braun's bid did not show that some of the brand name equipment's salient characteristics listed in the IFB would be met. For instance, HHS states that, based upon the information contained in Braun's bid, the agency was unable to determine whether the Braun system laundry folder included the required 2-bar static eliminator characteristic. HHS also states that the Braun literature failed to indicate that the Braun spreader feeder and ironer met the required production capacity.

Braun argues that a transmittal letter, which the firm included with its bid stating that its equipment meets or exceeds the solicitation specifications, constitutes a firm commitment on the part of Braun to supply equipment which meets the government's needs as specified in the IFB. Braun maintains that such a commitment takes precedence over the failure of its preprinted literature to provide certain information or address some equipment features.

To be responsive to a brand name or equal solicitation, a bid offering an equal product must contain sufficient descriptive literature to permit the contracting activity to assess whether the product offered possesses each salient characteristic specified in the solicitation. Frontier Manufacturing Company, B-215288, Nov. 14, 1984, 84-2 C.P.D. ¶ 529. Thus, we have held that the responsiveness of an equal bid depends on the completeness of the information submitted or reasonably available. Frontier Manufacturing Company, B-215288, supra; Schlegel Associates, Inc., B-213739, June 28, 1984, 84-1 C.P.D. ¶ 688; The Library Store, Ltd., B-213258, Feb. 9, 1984, 84-1 C.P.D. ¶ 162.

In this connection, the IFB contained the standard brand name or equal clause cautioning that it was each bidder's responsibility to furnish adequate information to permit an evaluation of the characteristics of an equivalent product where a product other than the brand name was offered.

Braun's bid falls short of establishing the equality of its product. While Braun maintains that its product meets the solicitation specifications, it is not enough that a bidder believes his product is equal or makes a blanket statement in its bid, as here, that all salient characteristics are met by its product. Frontier Manufacturing Company, B-215288, supra. The descriptive data furnished

with Braun's bid does not specify that the Braun laundry folder offered has the required 2-bar static eliminator. In fact, Braun's bid fails to include any information whatsoever on a static eliminator. Therefore, we agree with HHS that Braun's bid failed to include sufficient descriptive data to establish that this salient characteristic would be met. Since Braun's bid was nonresponsive on this basis, it is not necessary for us to address any other basis on which Braun's bid may be nonresponsive. Frontier Manufacturing Company, B-215288, supra.

Braun also alleges that, since its equipment is equal or superior to the Jensen equipment, the requirement for equipment with "dimensions unique" to the Jensen equipment unduly restricts competition.

In a brand name or equal procurement, products need not meet unstated features of the brand name item, but only the item's salient characteristics expressed in the solicitation. Scanray Corporation, B-215275, Sept. 17, 1984, 84-2 C.P.D. ¶ 299. Here, the solicitation clearly informed bidders of the Jensen equipment salient characteristics which equal equipment was required to meet. Thus, to the extent Braun is protesting that these specifications are restrictive, Braun's protest concerning this matter, filed several months after bid opening, is untimely and not for consideration on the merits under section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1984), which require that protests based upon alleged improprieties apparent on the face of the solicitation be filed prior to bid opening. Jensen Corporation, B-216746, Jan. 17, 1985, 85-1 C.P.D. ¶ \_\_\_\_\_; The E. A. Kinsey Company, B-211832, July 11, 1983, 83-2 C.P.D. ¶ 75.

Next, Braun alleges that the Jensen (brand name) equipment literature indicates that the Jensen equipment fails to conform to a solicitation specification. Braun, therefore, argues that all bids which included the Jensen literature, including the bid of the awardee, Standard Pressing Company (SPC), are nonresponsive.

This allegation is also untimely and not for our consideration on the merits. This issue should have been diligently pursued upon Braun's receipt of notification of award, but was not protested here until more than 3 months after Braun received that notification. See Sierra Pacific Airlines, B-205439, July 19, 1982, 82-2 C.P.D. ¶ 54; Resource Technology Services, Inc., B-204976, Mar. 17, 1982, 82-1 C.P.D. ¶ 254.

Finally, Braun alleges that the companies which offered Jensen equipment for this procurement, including SPC and Jensen Corporation, consulted with one another in arriving at their excessively high prices in violation of the solicitation's certificate of independent price determination. Braun's bid price was \$135,495 while the prices for the Jensen equipment ranged from \$231,986 to \$252,166. In support of its allegation, Braun states that bid prices submitted by Jensen Corporation under other recent solicitations for some of the same equipment procured here were substantially lower than the prices Jensen Corporation bid under this solicitation. Additionally, Braun states that Jensen Corporation could have underbid its supplier SPC, but questionably failed to do so here. Braun also alleges that the Jensen equipment suppliers other than SPC, who bid under this solicitation, generally do not submit bids for contracts in the geographical area specified in the IFB. Braun, therefore, requests that we investigate this matter.

While Braun alleges collusion on the part of certain bidders in connection with the bidding on this solicitation, Braun has not provided any specific evidence in support of its allegation and we therefore deny this aspect of the protest. See Larrabee Logging Company, B-217007, Dec. 13, 1984, 84-2 C.P.D. ¶ 665. Further, under our bid protest function, we do not conduct investigations for the purpose of establishing the validity of a protester's assertions. Pluribus Products, Inc.--Reconsideration, B-214924.2, July 11, 1984, 84-2 C.P.D. ¶ 42. However, if Braun has specific evidence of criminal conduct, it should be presented to the contracting officer for possible forwarding to the Department of Justice in accordance with the Federal Acquisition Regulation, 48 C.F.R. § 3.303 (1984). See Larrabee Logging Company, B-217007, supra.

for *Seymour E. Gross*  
Comptroller General  
of the United States