

M. De George



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jarrett S. Blankenship Co.

File: B-241704

Date: February 19, 1991

Jarrett S. Blankenship for the protester.
Douglas P. Larsen, Esq., Department of the Navy, for the agency.
Steven W. DeGeorge, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where low offeror unequivocally offered to perform the contract and took no exception to the terms of the solicitation specifications, the firm's offer was acceptable.

DECISION

Jarrett S. Blankenship Co. protests the award of a contract to the Trane Company under request for proposals (RFP) No. N00612-90-R-0244, issued by the Naval Supply Center, Charleston, South Carolina, for two air cooled reciprocating chillers. Blankenship contends that the unit which Trane intends to supply does not comply with certain of the specifications contained in the RFP. The protester also complains that the agency did not check for Trane's compliance with these specifications.

We deny the protest.

The RFP was issued on July 12, 1990, soliciting offers for two 200-ton air cooled reciprocating chillers. Section C of the solicitation set forth the agency's specifications for the unit required. No brand name or equal was specified, nor were offerors requested to identify the make or model unit offered or to submit descriptive literature. Award was to be made based on low price.

On August 23, three offers were received; Trane submitted the low offer and Blankenship was the highest offeror. Neither Trane nor York International, the second-low offeror, identified the particular unit offered in response to the RFP. The contracting officer, however, telephoned Trane and obtained the model number of the unit offered. The Navy

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reports that this was done in order that a particular unit could be identified in the contract to be awarded. On September 20, the contract was awarded to Trane calling for delivery of model CCAC D204 EVW air cooled reciprocating chillers.

Following receipt of written notice of the award, Blankenship filed an agency protest alleging that both Trane and York did not have units which complied with the RFP specification for output. The contracting officer denied this protest by letter dated October 5. Blankenship subsequently filed the instant protest with our Office realleging the basis for its agency protest, and arguing in addition that the Trane unit actually would be a different model than the unit identified, and that the model which would be supplied does not include a reciprocating compressor as required by the RFP specifications. With its comments to the agency's report, the protester provided a Trane specification booklet dated August 1989. This booklet does not include specifications on the model called for under the contract.

There is nothing on the face of Trane's offer to indicate that the firm will not perform in accordance with the terms of the solicitation. The RFP did not require identification of the units offered or the submission of descriptive literature. Nevertheless, the agency requested and received from Trane the model number of the units to be supplied. Other than stating that the unit does not meet the RFP specification and providing information on a model different from that offered by Trane, there has been no showing by the protester that the offer was nonconforming. Thus, in our view, Trane made an unequivocal offer to supply air chillers in compliance with the RFP specifications and the offer was acceptable. See Berema, Inc., B-239212, June 22, 1990, 90-1 CPD ¶ 584. Whether Trane will in fact be able to supply a conforming product is a matter of the firm's responsibility. We will not review an affirmative determination of responsibility absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (5) (1990). Neither exception applies in this case.

Finally, we regard as untimely the protester's complaint that the contract was awarded "without checking specifications." We view this complaint as a challenge to the method of evaluation under the RFP. As indicated, the RFP did not require offerors to submit descriptive literature for evaluation. All that was required by offerors was an affirmative response to the specifications. If the protester

found this procedure objectionable, it was required to have protested prior to submission of offers in order to be timely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

The protest is denied.


for James F. Hinchman
General Counsel