

DOCUMENT RESUME

03869 - [A2773999]

[Company Protests Rejection of Its Bid along with Others on Grounds of Nonresponsiveness]. B-189032. September 28, 1977. 3 pp.

Decision re: Austir-Campbell Co.; by Robert P. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Army: Corps of Engineers; Geldback Refrigerator Co.

Authority: B-185681 (1976). B-186973 (1976). B-188486 (1977). 49 Comp. Gen. 377.

The company initially lodged a protest claiming that the successful bidder was nonresponsive which the Army determined to be the case and, at the same time, determined all other bidders to be nonresponsive. The company's protest of this determination of nonresponsiveness was denied. (SS)

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DECISION



Hubert H. P. L. #1

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

FILE: B-189032

DATE: September 28, 1977

MATTER OF: Austin-Campbell Co.

DIGEST:

Determination to reject bid as nonresponsive due to descriptive literature which did not clearly demonstrate bidder's compliance with specification was proper as descriptive literature was necessary for bid evaluation and to assure conformance with specification.

The Austin-Campbell Co. (Austin-Campbell) initially protested award of a contract to Geldback Refrigerator Company, Inc., under invitation for bids No. DACA07-77-B-0003, issued by the United States Army Corps of Engineers. Subsequent to Austin-Campbell's protest, the Corps determined that Geldback's bid was nonresponsive as alleged by Austin-Campbell and terminated Geldback's contract. Since it was determined that Austin-Campbell's bid was also nonresponsive and all other bids were either nonresponsive or exceeded the applicable funding limitation, no award was made under the subject solicitation and the procurement has been readvertised. Austin-Campbell contends that its bid was responsive and that it should therefore receive award under the original solicitation.

The procurement is for a cold storage room for use in Korea. The original solicitation included the following pertinent provision:

"C-32 REQUIREMENT FOR DESCRIPTIVE LITERATURE (APR 1973)

"(a) Descriptive literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to design, components, performance characteristics and method of operation.

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"(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. * * *"

The schedule of the items to be furnished provided:

* * * * *

"b. 8 Sets of packaged refrigerated units wall mounted with room temp. controllers and built-in control boxes. Cooling load: 20,000 BTUH @ + 10°F evap temp

* * * * *

DESCRIPTIVE LITERATURE IS TO BE FURNISHED
IN ACCORDANCE WITH PARA. C-32"

The Austin-Campbell bid was found nonresponsive because, among other things, it was concluded that the descriptive literature submitted with the bid showed that the cooling capacity for the eight sets of packaged refrigerated units called for under item No. 0001 b. was 15,300 BTU/HR instead of the required 20,000 BTU/HR. The question of responsiveness concerns whether a bidder has unequivocally offered to provide the requested item in total conformance with the terms and specifications of the solicitation. Sentinel Electronics, Inc., B-185681, June 24, 1976, 76-1 CPD 405. The descriptive literature clause included in the subject solicitation provided that the data was required to establish details of the item offered and, further, that failure of the data to show conformance with the specifications would require rejection of the bid. Our Office has held that the submission of descriptive data, where the data is used for bid evaluation, is a matter of responsiveness and where the data does not clearly show conformance with the specifications rejection of the bid is required. Fabcraft Inc., dba FABCO, B-186973, November 5, 1976, 76-2 CPD 384.

Here, the Corps has determined that the data submitted by Austin-Campbell showed that it intended to furnish refrigerated units with 15,300 BTU/HR capacity rather than the 20,000 BTU/HR capacity required. The determination of whether a bidder's product meets the specifications

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is primarily for the procuring agency and we will not substitute our judgment for that of the procuring agency in the absence of clear and convincing evidence that the agency determination is in error or arbitrary. 49 Comp. Gen. 377 (1969). While we do not view the data as showing Austin-Campbell's intention to supply an item with 15,300-BTU/HR capacity, we believe that the data failed to show that Austin-Campbell's offered item was in total conformance with the required specification. In the printed descriptive literature submitted with its bid for the refrigerated units, Austin-Campbell indicated it was bidding on its system No. A2-300A with a BTU/HR rating of 15,300, with the system No. followed by indiscernible handwriting and the BTU/HR rating crossed out and no figures substituted therefor. If Austin-Campbell intended to modify its system to meet the specification, it should have clearly indicated this on the descriptive data submitted. Cummins-Wagner Co., Inc.; Joy Manufacturing Company, B-188486, June 29, 1977, 77-1 CPD 462. Since this was not done, we believe the bid was properly found nonresponsive because of this ambiguity.

In view of the foregoing, it is not necessary to address the other grounds of nonresponsiveness.

Accordingly, the protest is denied.


Acting Comptroller General
of the United States