

**DECISION**

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

*nshe n**26666***FILE:** B-212167**DATE:** November 1, 1983**MATTER OF:** Jarrett S. Blankenship Co.**DIGEST:**

1. Failure of a solicitation to specify or adequately describe all required features of a brand name product in a brand name or equal solicitation, resulting in bids which unknown to the bidders, were not acceptable to the agency, provides a cogent and compelling reason to cancel the solicitation after opening.
2. A claim for the costs associated with the preparation of bids or proposals will be denied where the underlying bid protest lacks merit.

Jarrett S. Blankenship Co. protests the cancellation of invitation for bids (IFB) No. DABT57-83-B-0038 issued by the Department of the Army for the procurement of two air conditioning units to be delivered to Fort Eustis, Virginia. The contracting officer canceled the IFB on the grounds that it failed to adequately state the government's minimum requirements and was ambiguous. We deny the protest.

Although the solicitation as originally issued included a brand name or equal clause and a requirement for submission of descriptive literature, the IFB did not specify a brand name product, but instead merely described the two air conditioning units sought to be procured as one 60-ton liquid chiller and one 50-ton liquid chiller, both to include a 5-year compressor warranty, a factory start-up and first year labor warranty, a specified vapor proof flow control switch, and specified relays. The IFB was subsequently amended to add the requirement that the 60-ton capacity air conditioning unit be a Trane model No. CGAB-C601-AA01FK or equal unit and the 50-ton capacity air conditioning unit be a Trane model No. CGAB-C501-AA01FK or equal unit. However, the Army failed to further

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specify those salient characteristics of the brand name products deemed essential to satisfy the needs of the government.

In response to the solicitation, the Army received four bids, two of which lacked descriptive literature. Of the remaining two bids, Blankenship's bid of \$35,032 for supplying one Carrier model No. 30GB070 unit in response to the requirement for a 60-ton unit and one Carrier model No. 30GB045 unit in response to the requirement for a 50-ton unit was the apparent low bid, while a bid submitted by the Trane Company offered the brand name units for \$40,449.

In the subsequent technical evaluation of the bids, the Army determined that the Carrier model No. 30GB070 offered by Blankenship in fact "far exceeded" the advertised requirements and that its installation would require a complete rewiring from the main transformer to the new units at an estimated cost of \$1,579 for materials and labor. Further, Blankenship alleged to the Army that under certain temperature conditions the brand name Trane units could not meet the advertised requirements for 60- and 50-ton capacities. Blankenship contended that a condenser entering air temperature of 95°F and a leaving chilled water temperature of 45°F would yield a capacity of 55.3 tons for the Trane model No. CGAB-C601-AA01F unit, as compared with 69 tons for the Carrier model No. 30GB070 unit and the advertised requirement of a 60-ton capacity. Blankenship also indicated that the same temperatures would yield a capacity of 46.2 tons for the Trane model No. CGAB-C501AA01FK unit as compared with 45.1 tons for the Carrier model No. 30GB045 unit and the advertised requirement of a 50-ton capacity.

The contracting officer subsequently determined that the specifications were ambiguous and failed to state the government's minimum needs and therefore canceled the IFB in order to resolicit with new specifications. Blankenship thereupon protested to our Office.

The Army initially contends that Blankenship's bid was "nonresponsive" to the solicitation and Blankenship would be ineligible for award even if its protest was sustained and the solicitation reinstated. Therefore, the Army argues, Blankenship is not an interested party under our Bid Protest Procedures, 4 C.F.R. Part 21 (1983), and

we should not consider the merits of its protest. See E. J. Nachtwey, B-209562, January 31, 1983, 83-1 CPD 104; 4 C.F.R. § 21.1(a). However, the Army fails to specify in what respects Blankenship's bid was nonresponsive to the solicitation and none is apparent from the record. Accordingly, we will consider the merits of Blankenship's protest.

The Army argues that the specifications were inadequate and ambiguous because they failed to state those salient characteristics of the brand name Trane units which were essential to meet the minimum needs of the Government and failed to indicate the standard by which the Army intended to base capacity determinations. The Army contends that these defects provided a cogent and compelling reason to cancel the IFB.

Although cancellation of an advertised solicitation after bid opening requires a cogent and compelling reason, the use of inadequate specifications generally provides such a reason. See Pacific Scientific Company, Gardner-Neotec Division, B-208193, January 18, 1983, 83-1 CPD 61. In particular, we have previously held that:

"Bidders offering 'equal' products should not have to guess at the essential qualities of the brand name item. Under the regulations they are entitled to be advised in the solicitation of the particular features or characteristics of the referenced item which they are required to meet. An invitation which fails to list all the characteristics deemed essential, or lists characteristics which are not essential, is defective." B-157857, January 26, 1966.

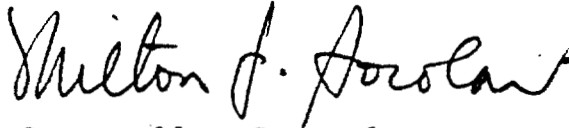
See Air Plastics, Inc., 59 Comp. Gen. 678 (1980), 80-2 CPD 141; 48 Comp. Gen. 441, 444 (1968); Defense Acquisition Regulation § 1-1206.2(b)(1976 ed.).

The air conditioning units to be procured under IFB -0038 were replacement units, and were to be compatible with wiring existing at the site. The Army failed to advise bidders in the solicitation that any unit offered must be compatible with the existing wiring, as a result of which three of the four bidders offered a unit which

would require rewiring in order to accommodate that unit's greater power consumption. It is also clear from the record that the Army is not prepared to go through a rewiring effort, and all that may entail. In addition, Blankenship's correspondence with Fort Eustis demonstrated that the IFB's description of the equipment as "50-ton" and "60-ton" units, without supplying the criteria by which that capacity was determined, created further uncertainty as to what would be acceptable as an "equal" to the brand-name products. Under these circumstances, we think the specifications were indeed inadequate and provided a compelling reason for canceling the solicitation.

Blankenship has requested reimbursement for itself of \$10,000 in "profit, labor and warranty contracts" and \$3,000 for Mingledorff, Inc. Blankenship does not explain Mingledorff's relationship to the contract or why it should receive \$3,000, but we assume that firm is a sub-contractor. We need not address the question of whether these types of costs are recoverable since claims for the costs associated with the preparation of bids or proposals will be denied where we find no merit to the underlying protest. See Holmes & Narver Services, Inc., B-208652, June 6, 1983, 83-1 CPD 605; Armco, Inc, Stainless Steel Division; and D.K.F. Fabrication, Inc., B-210018, B-210018.2, May 23, 1983, 83-1 CPD 553.

The protest is denied.

for   
Comptroller General  
of the United States