

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20540**

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FILE: B-214192

DATE: February 22, 1984

MATTER OF: K. B. Construction

DIGEST:

1. Agency may properly award contract to low, nonresponsive bidder where (1) all bids received are nonresponsive for the same reason and (2) notwithstanding its nonresponsiveness the low bid will meet the government's actual needs, since acceptance of the bid in such circumstances will not prejudice other bidders.
2. Claim for bid preparation costs is denied where there is no showing of government impropriety with respect to claimant's bid.

K. B. Construction (KBC) protests the Air Force's award of a contract to Lee C. Nelson, Inc., under invitation for bids (IFB) No. F24604-83-B-0066 issued by the Base Procurement Office, Malmstrom Air Force Base, Montana.

We summarily deny the protest because it clearly lacks legal merit. 4 C.F.R. § 21.3(g) (1983), as amended by 48 Fed. Reg. 1931 (1983).

At bid opening, all bids were nonresponsive because they failed to meet the IFB requirement for the submission of manufacturer's test data and machine calibration data. The Air Force decided to proceed with an award to the low, nonresponsive bidder provided that the required data was submitted and approved prior to the start of work. The Air Force concluded that this would not give any of the bidders an unfair competitive advantage.

KBC initially protested to the Air Force on the basis that it was prejudiced by the Air Force's failure to insist on the data requirement. KBC argued that the data requirement had increased its bid price by 10 percent. However,

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we note that no data was submitted with its bid. Moreover, the contracting officer in denying KBC's protest made it clear that the requirement was made a condition precedent to beginning performance. In its protest to our Office KBC has not disputed that the data requirement was made a condition of performance for the awardee.

We have held that where all bids received are nonresponsive for the same reason and notwithstanding its nonresponsiveness the low bid will meet the government's actual needs, the contracting agency may accept the low nonresponsive bid, since acceptance of the bid in such circumstances will not prejudice other bidders. Singleton Contracting Corporation, B-211259, August 29, 1983, 83-2 CPD 270.

KBC also requests bid preparation costs. A prerequisite to entitlement to bid preparation costs is a showing of some impropriety on the part of the government with respect to KBC's bid. Since we have found that the Air Force properly awarded the contract the claim for bid preparation costs is disallowed. Tom Shaw Inc.; Merritt Dredging Company, B-210781, B-210781.2, August 16, 1983, 83-2 CPD 218.



Acting Comptroller General
of the United States