

DECISION



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

28609

FILE: B-213473

DATE: June 25, 1984

MATTER OF: Jarrett S. Blankenship Co.

DIGEST:

1. Failure of "equal" product to meet all of the salient characteristics required by "brand name or equal" invitation properly resulted in rejection of bid as nonresponsive.
2. An agency's technical evaluation of a bid will not be disturbed where it is not shown to be unreasonable, arbitrary, nor violative of procurement laws and regulations.
3. Protest of alleged improprieties which are apparent on the face of a solicitation must be filed prior to bid opening.
4. A bidder is not entitled to recovery of bid preparation costs where its bid was properly rejected as nonresponsive.
5. There is no legal basis to pay anticipated profit to an unsuccessful bidder.

Jarrett S. Blankenship Co. protests the rejection of its low bid submitted in response to invitation for bids (IFB) No. F01600-83-BA004, issued by Maxwell Air Force Base, Alabama for two water cooled liquid chillers, with two 50-ton semi-sealed compressors, 100 ton, Trane Co. Model No. CGWB-D106R or equal. Blankenship contends that the Air Force improperly rejected its bid as non-responsive. The protester also claims lost profit and bid preparation costs. For the reasons stated below, we deny the protest in part, dismiss it in part and deny the claim.

The Air Force rejected Blankenship's bid, which offered Carrier Corporation Model No. 30HR 100-5, as nonresponsive after determining that the descriptive material submitted with the bid did not show that all of

029249

the salient characteristics of the unit identified in the solicitation would be met. Specifically, the Air Force states the unit offered by the protester did not have part winding starters, was 6 feet 11 inches high while the solicitation required the unit to be "approximately" 5 feet 1-7/8 inches high, and failed to include a load limit thermostat, oil pressure gauges, pressure safety cutout and an embedded motor winding sensor.

Blankenship contends that its unit meets the solicitation requirements and is capable of meeting the Air Force's needs at a lesser cost than the brand name unit. In this regard, the protester states that since it offered a 100 ton-unit with four 25-ton compressors, part winding starters were not needed. Further, Blankenship maintains its unit was indeed "approximately" the height specified in the solicitation and states it did offer to include oil pressure gauges.

Where, as here, the procuring activity in a brand name or equal solicitation identifies specific salient characteristics which are to be provided and requires descriptive data to establish that the specifications are met, the responsiveness of the "equal" bid depends upon the completeness of the information submitted or reasonably available. Rack Engineering Company, B-208554, March 7, 1983, 83-1 CPD ¶ 224. It is not enough that the bidder believes its item is equal or makes a blanket statement that all salient characteristics are met. The data must permit the agency to establish that each of the specified salient characteristics of the brand name item is present in the item bid. Sutron Corporation, B-205082, Jan. 29, 1982, 82-1 CPD ¶ 69. The overall determination of the technical adequacy of the bid is primarily a function of the procuring agency which we question only upon a clear showing of unreasonableness, an arbitrary abuse of discretion or a violation of procurement statutes and regulations. Emerson Electric Co., B-212659, Nov. 4, 1983, 83-2 CPD ¶ 529.

The protester has not shown that the agency's determination that its bid was nonresponsive was unreasonable. Blankenship does not deny that the unit it offered did not contain part winding starters. While the Air Force agrees with Blankenship that its four compressor unit was acceptable, it states that because of the computers which will be in use near the compressors, part winding starters are needed to prevent power surges. The protester's mere disagreement here with the agency's position does not constitute a showing that the agency's position is unreasonable.

Further, we agree with the agency's view that Plankenship's 6 feet 11 inch high unit does not meet the specification requirement that the unit be "approximately" 5 feet 1-7/8 inches high. The agency states that the unit offered by Blankenship is simply too high to be fitted into the available space. Finally, we have reviewed the literature submitted by Blankenship and we are unable to determine from that literature that the unit offered by Blankenship possessed the remaining features which the agency determined were not present. We, therefore, have no basis upon which to disturb the agency's decision to reject Blankenship's bid.

Blankenship also contends that the brand name or equal solicitation was a method used by the Air Force to let a sole-source contract to the brand name manufacturer. This contention is untimely. It was apparent from the face of the solicitation, that bids were sought on a brand name or equal basis. Under our Bid Protest Procedures, protests based on alleged improprieties in a solicitation must be filed prior to bid opening. See 4 C.F.R. § 21.2(b)(1) (1984). Since Blankenship's protest was not filed until after bid opening, this portion of its protest is untimely and we will not consider it.

In view of our conclusion, Blankenship is not entitled to recovery of its bid preparation costs. Jarrett S. Blankenship Co., R-213294; R-213294.2, April 2, 1984, 84-1 CPD # 370. Also, there exists no legal basis for allowing an unsuccessful bidder to recover anticipated profit.

The protest is denied in part, dismissed in part and the claim denied.

for Milton F. Fowler
Comptroller General
of the United States

