

DECISION

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

FILE: B-216919 **DATE:** January 11, 1985
MATTER OF: NJCT Corporation

DIGEST:

1. Small Business Administration is empowered by statute to conclusively determine matters of size status for federal procurements, and GAO will neither make nor review such determinations.
2. Where descriptive literature accompanying bid fails to show conformance with salient characteristics specified in solicitation, the bid is nonresponsive.

NJCT Corporation protests the award of a contract to Anaconda Refrigeration and Air Conditioning, Inc. (Anaconda) for the purchase of ice making machines, ice storage bins and user manuals under invitation for bids (IFB) No. F44650-84-B-0002 issued as a small business set-aside by the Department of the Air Force.

NJCT contends that the award to Anaconda is improper because Anaconda is a division of a large business and is not eligible for the award. In addition, NJCT protests that the contracting officer incorrectly interpreted and rejected its bid.

We dismiss the protest in part and deny it in part.

Concerning Anaconda's size status, the Air Force reports having referred this matter to the Small Business Administration (SBA) for review. Under 15 U.S.C. § 637(b) (1982), the SBA is empowered by statute to conclusively determine matters of size status for federal procurement procedures. Therefore, this Office will neither make nor review determinations of size status. Extinguisher Service, Inc., B-214354, June 14, 1984, 84-1 CPD ¶ 629; see also GAO's bid protest procedures, 4 C.F.R. § 21.3(g)(2) (1984). Accordingly, we dismiss this portion of NJCT's protest.

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With respect to the rejection of its bid, NJCT argues that its bid met or exceeded all required specifications. The Air Force responds that NJCT's bid consisted of three alternatives, the first lacking adequate descriptive literature and the other two accompanied by literature exhibiting noncompliance with requirements in the solicitation.

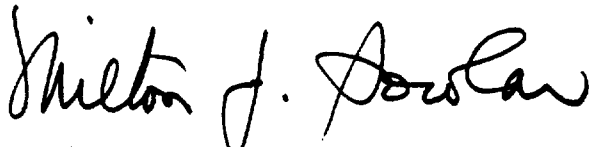
Initially, we note that NJCT does not question the Air Force rejection of its first alternative bid. As for the other alternatives, our examination of the record affirms the Air Force's position. The IFB specifies that "[ice] cube size must be 1" by 1" by 1" or less, but not smaller than 3/4" by 3/4" by 3/4"." NJCT's descriptive literature states that its ice makers feature "quality ice in unique diamond shapes . . . in 5/8 inch (1.6 cm.) cubelets and 1-1/4 inch (3.2 cm.) cubes," thus exceeding both the upper and lower size limits. Furthermore, the solicitation requires that the amperage be from 15 to 20 amps, whereas NJCT's literature features an ice maker requiring 22 amps. Finally, the solicitation limits the height of the ice maker, with a storage bin, to 83 inches. NJCT's literature does not clearly show compliance with this specification.

It is clear from the record that NJCT's descriptive literature accompanying its bid does not conform to some of the salient characteristics listed in the solicitation. We have consistently held that bids which fail to show conformance with the salient characteristics specified in a solicitation are nonresponsive and cannot be accepted. The Library Store, Ltd., B-213258, Feb. 9, 1984, 84-1 CPD ¶ 162. Moreover, conformance must be determined from the face of the bid itself without resort to explanations furnished after bid opening. Le Prix Electrical Distributors, Ltd., B-212518, Dec. 27, 1983, 84-1 CPD ¶ 26. NJCT's protest is denied in this regard.

Finally, we note that NJCT complains that the Air Force failed to give 5 days written notice of the intent to reject NJCT's "low bid." NJCT does not call our attention to such a notice requirement in the solicitation or the Federal Acquisition Regulation, nor are we aware of

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any. In any event, the failure to give such notice, even if required, would be a procedural deficiency not affecting the validity of the award. Compare Emerson Electric Co., B-213382, Feb. 23, 1984, 84-1 CPD ¶ 233.

for 
Comptroller General
of the United States