

Gaynor



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ross Cook, Inc.

File: B-231686

Date: September 7, 1988

DIGEST

1. Where a brand name or equal solicitation sets forth necessary design features, such as size or weight, in very specific terms, an offered equal product must meet them precisely in order to be found acceptable.
2. Award based on initial proposals to other than the lowest-priced offeror is proper where the lower offer is technically unacceptable and thus would not have been included in discussions had they been conducted.

DECISION

Ross Cook, Inc., protests the award of a contract to Spencer Turbine Company under request for proposals (RFP) No. DAAA03-88-B-0026, issued by the Department of the Army for an air blower and motor for use at a hazardous waste disposal site. Ross Cook contends that the contracting agency improperly rejected its offer as technically unacceptable. We deny the protest.

The RFP specified a Spencer Turbine blower or equal, and set out, both in the written specifications and in accompanying drawings, a number of precise dimensions and capacities to which any offered equal had to conform. The Army states that these details were necessary because the air blower and motor had to be interchangeable with the ones being replaced; the Army's aim was to interchange units of the old and new equipment in order to insure the continuous operation of the waste disposal site. Also, according to the Army, the current equipment is surrounded by immovable structures on three sides, so that there was no space available, as a practical matter, to install a unit with other than the specified dimensions.

The Army determined Ross Cook's proposal, at a price of \$28,787, to be technically unacceptable because the offer

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contained numerous deviations from the stated dimensions, for example: (1) the total length of the base mount in Ross Cook's proposal was 182 inches while the solicitation required 157-1/2 inches; (2) the centerline dimension was 86 inches while the solicitation required 85-1/4 inches; and (3) the "baseline to inlet" height was 63-1/2 inches while the solicitation required 66-1/2 inches. The Army also noted that the locations of the intake and discharge connections of the unit offered by Ross Cook were reversed compared to the locations specified in the solicitation's drawings. The Army accepted Spencer Turbine's own initial proposal of \$43,205, the lowest priced technically acceptable offer received.

Ross Cook admits that the equipment it offered did not meet the exact specifications called for in the solicitation, but argues that it could have modified the equipment to meet all required characteristics and would have so explained had it been given the chance. The protester asserts that it always intended to furnish conforming items, so that the Army could have met its needs at a lower price had it accepted Ross Cook's offer.

There is no legal merit to the protest. When a salient characteristic is stated in general terms, the equal product need not meet the characteristic exactly as the brand name does; it need only be functionally equivalent to the brand name in that regard. See Cohu, Inc., B-199551, Mar. 18, 1981, 81-1 CPD ¶ 207. However, where, as here, a solicitation sets forth design features in very specific terms, offerors are on notice that the equal product must meet them precisely. See NJCT Corp., B-220132, Nov. 26, 1985, 85-2 CPD ¶ 605. Since the protester concedes that its proposal was not exactly within the dimensions specified, the Army properly found the offer unacceptable. See Dictaphone Corp., B-228241, Dec. 23, 1987, 87-2 CPD ¶ 619.

Further, the fact that Ross Cook could have explained or changed its initial offer had it been given the chance to do so does not affect the validity of the award. An agency may make an award on the basis of initial proposals--that is, without entering into discussions with the competitors--where acceptance of an initial proposal will result in the lowest overall cost to the government. 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. IV 1986). While we recognize that Ross Cook's offer was lower in price than was Spencer Turbine's, in applying the stated rule we have held that an agency is not precluded from accepting an initial proposal that is not lowest in price where the lower one is technically unacceptable, since the low offer would not be included in the competitive range for purposes of

negotiations if they were conducted. See Micronics, Inc., B-228424, Feb. 27, 1988, 88-1 CPD ¶ 185. Ross Cook, having submitted an unacceptable initial offer, therefore had no right to an opportunity to change or explain it. See Federal Acquisition Regulation §§ 15.609, 15.610 (FAC 84-16).

The protest is denied.


for James F. Hinchman
General Counsel