

Exec 2/8/93
150/111

12122510



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Innovative Refrigeration Concepts

File: B-253983

Date: October 26, 1993

Richard D. Lieberman, Esq., Sullivan & Worcester, for the protester.

George N. Brezna, Esq., and M.J. Pletzke, Esq., U. S. Marine Corps, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Offer on a brand name or equal solicitation that proposes an "equal" product, which fails to satisfy a specifically stated salient characteristic, is unacceptable and may properly be rejected, even if the agency initially rejected the proposal for a different invalid reason and only advanced the proper reason in its report on the protest.

DECISION

Innovative Refrigeration Concepts protests the rejection of its offer and the subsequent award to American Engineering Corporation under request for proposals (RFP) No. M67400-93-R-0043, issued by the United States Marine Corps, Okinawa, Japan, for air cooled condensers.

We deny the protest.

The Marine Corps issued the RFP on June 4, 1993, soliciting offers on a brand name or equal basis for a Carrier model 09DE-146-C603 condenser. The RFP listed six salient characteristics of the brand name product, including copper coils and fins, and an air flow capacity of 115,000 cubic feet per minute (cfm). The RFP also stated:

"Offeror's submitting offers of equal products to [b]rand [n]ame products identified [in the RFP], are required to submit complete descriptive literature in conjunction with [s]ubmission of offers. The [g]overnment does not intend to enter into discussions as a result of offers received, therefore, failure to provide descriptive literature which fully represents the offered

product as being functionally equal to the [b]rand [n]ame product identified will require rejection of the offer."

Three offerors, including Innovative Refrigeration and American Engineering, submitted proposals by the closing date of June 18. Upon review of Innovative Refrigeration's low-priced proposal of an equal product, the Marine Corps concluded that the proposal was ambiguous as to whether aluminum or copper fins were included in the offered price and therefore should be rejected as unacceptable. On June 22, the Marine Corps awarded a contract to American Engineering, which had offered the brand name product specified.

On July 2, Innovative Refrigeration protested the rejection of its proposal, alleging that its proposal clearly offered the required copper fins and that the agency should have requested clarification before determining that its proposal was unacceptable for this reason. In reviewing the protester's proposal in response to the protest, the Marine Corps discovered that, even if Innovative Refrigeration did unambiguously offer copper fins, the "equal" product offered had an air flow capacity of only 111,435.7 cfm, which did not satisfy the air flow capacity salient characteristic.

In brand name or equal procurements, when salient characteristics are listed in terms of specific performance standards or design features, the "equal" product must meet these requirements precisely. Tandem Computers, Inc., 65 Comp. Gen. 490 (1986), 86-1 CPD ¶ 362; Cohu, Inc., B-199551, Mar. 18, 1981, 81-1 CPD ¶ 207. Furthermore, salient characteristics stating technical requirements in clear and precise terms are presumed to be material to the needs of the government. Tandem Computers, Inc., supra; MI Lundia, Inc., B-214715, Jan. 3, 1985, 85-1 CPD ¶ 14. A proposal that does not exactly meet such salient characteristics is unacceptable. Ross Cook, Inc., B-231686, Sept. 7, 1988, 88-2 CPD ¶ 216; see Dictaphone Corp., B-228241, Dec. 23, 1987, 87-2 CPD ¶ 619. Our review of the record shows that although Innovative Refrigeration's proposal unambiguously offers copper fins, its proposed product clearly fails to satisfy the air flow capacity salient characteristic and was therefore properly found unacceptable.

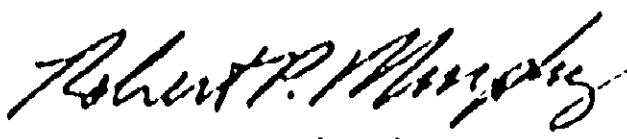
Here, the salient characteristic for air flow capacity is stated as 115,000 cfm. Innovative Refrigeration's proposal's descriptive literature states that the standard product offered, with aluminum fins, has an air flow capacity of 108,190 cfm, and that its offered product includes "[copper] tubes/[copper] fins coils. This results in 3 [percent] additional capacities." This means that the

protester's offered product has an air flow capacity of 111,435.7 cfm as calculated by the Marine Corps. Since this air flow capacity fails to satisfy the salient characteristic stated in the RFP, Innovative Refrigeration's proposal is unacceptable. See Ross Cook, Inc., supra.

Innovative Refrigeration argues that, since the Marine Corp did not reject its proposal on this basis and did not even notice this deficiency in air flow capacity until after the protest was filed, the Marine Corps has raised this issue in bad faith and should be prohibited from rejecting Innovative Refrigeration's proposal on this basis.¹ We disagree.

There is no basis for requiring the government to consider for award a proposal which does not meet its minimum needs. Western Div. Investments; Columbia Investment Group, B-213882, Sept. 5, 1984, 84-2 CPD ¶ 258; Eastern Marine, Inc., B-213945, Mar. 23, 1984, 84-1 CPD ¶ 343. Accordingly, an agency's failure to initially provide the correct reasons for rejecting an offer does not estop the government from rejecting that offer where a valid reason does exist for rejecting that offer. See H. Bendzulla Contracting, B-246112, Nov. 8, 1991, 91-2 CPD ¶ 441; Martin Contracting, B-241229.2, Feb. 6, 1991, 91-1 CPD ¶ 121. Although the Marine Corps' initial reason for rejecting the protester's proposal was insufficient to justify finding the proposal unacceptable, the record shows that Innovative Refrigeration's proposal is unacceptable because of its products' air flow capacity. Indeed, Innovative Refrigeration does not allege that its offered product, in fact, has the specified air flow capacity. Therefore, we do not object to the rejection of Innovative Refrigeration's offer.

The protest is denied.


for James F. Hinchman
General Counsel

¹Innovative Refrigeration also alleges that the salient characteristic for air flow capacity misstates the agency's actual minimum needs, which, if properly stated, would be satisfied by the equal product proposed by the protester. This contention concerns an alleged solicitation impropriety apparent prior to the time set for receipt of initial proposals and is therefore untimely raised, and not for our Office's consideration, since it was not filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1993).