

DECISION

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

[Protest of Bid Rejection as Nonresponsive]

FILE: B-198812

DATE: June 4, 1980

MATTER OF: Mars Data Systems

DIGEST:

Unsolicited descriptive literature included with bid which indicates that item offered does not meet IFB specification renders bid nonresponsive.

Mars Data Systems (Mars) protests the rejection of its bid by the Department of Commerce as nonresponsive under invitation for bids (IFB) No. NB8OSBCA0345 for a weather station system. The bases for the rejection were that the wind direction sensor proposed by Mars did not meet the IFB's range specification for that item, and that Mars failed to indicate in its bid that it would meet the IFB requirement that sensor signals be routed to six separate projects.

It is clear from the protester's initial submission that the protest against the first reason for rejection is without legal merit, rendering moot the protest against the second. Therefore, we will decide the matter on the basis of that submission without requesting a report from the contracting agency. R. M. Thomas Co., B-196719, November 20, 1979, 79-2 CPD 370.

The IFB required that the system's wind direction sensor have a range of 0-540 degrees. Mars stated in its bid that the range of the wind direction sensor it would provide was only 0-360 degrees.

However, Mars points out that it included in the bid an introductory statement that the weather station system that would be furnished was "as described in" the solicitation. In addition, unsolicited preprinted descriptive literature submitted with the bid, while

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repeating the 0-360 degree range, also included the phrase "or (optionally) over a range of 0 to 540 degrees." Mars argues that these factors should have established to the Department of Commerce's satisfaction that the firm would meet the 0-540 degrees range requirement.

To be responsive, a bid as submitted must represent an offer to perform the exact thing called for in the invitation. Edw. Kocharian & Company, Inc., 58 Comp. Gen. 214, 217 (1979), 79-1 CPD 20. Here, bids were invited for a system having a wind direction sensor with a range of 0-540 degrees. Clearly, Mars' bid on its face was not responsive to that specification. Moreover, while unsolicited descriptive literature properly may be considered to determine whether the item described conforms to specifications, Mueller & Wilson, Inc., B-193008, March 7, 1979, 79-1 CPD 156, in our view the literature submitted with Mars' bid does not establish that Mars unequivocally was offering a wind direction sensor that would include the optional 0-540 degrees range feature, and thus that acceptance of the bid would bind Mars to meet the subject specification at the bid price. See Abbott Laboratories, B-183799, September 23, 1975, 75-2 CPD 171, at p. 4. At best, there was an ambiguity on the matter, and the bid therefore had to be rejected as nonresponsive in any event. 49 Comp. Gen. 851 (1970). In this respect, neither a blanket statement that specifications will be met, nor a bidder's intention to meet them can render acceptable a bid which on its face offers something other than that solicited. 49 Comp. Gen. 553, 556 (1970); The Entwistle Company, B-192990, February 15, 1979, 79-1 CPD 112; Spectrolab, Inc., B-189947, December 2, 1977, 77-2 CPD 438.

The above discussion renders academic the protest involving Mars' responsiveness to the requirement for routing sensor signals. Nevertheless, in contrast to the wind direction sensor situation in which Mars specifically indicated in the bid a capability different than the one specified, Mars evidently took no exception to the requirement to route sensor signals to six separate projects and, therefore, simply by signing the bid the

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firm would have been bound to perform in accordance with it. Thus, the rejection of the bid merely because Mars failed to mention the requirement would have been improper

The protest is summarily denied.

Milton J. Aoulan

For The Comptroller General
of the United States