

DECISION



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

FILE: B-203082

DATE: May 29, 1981

MATTER OF: CFE Equipment Corporation

DIGEST:

1. When some but not all specifications on one page of solicitation are revised by amendment, protester cannot reasonably assume that specifications continued on following page are automatically deleted by amendment, but must seek clarification or risk rejection of bid as nonresponsive.
2. Refuse loader in which certain functions are controlled by foot pedal differs materially from one in which all functions are hand-controlled, and center-mounted control differs materially from two controls, one on each side of operator. In brand name or equal procurement, bid on such nonconforming equipment must be rejected, even if product offered functions as well as brand name product and satisfies intent of specifications.
3. When it is clear from protester's initial submission that protest is without legal merit, GAO will summarily deny protest without requiring report from contracting agency.

CFE Equipment Corporation protests rejection of its low bid for tractors to be used in handling refuse collected at Fort Eustis, Virginia on grounds that the equipment offered did not meet specifications calling for dual hand controls.

Protest of bid is non-responsive

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The firm argues that the specifications in question were effectively deleted by an amendment to the solicitation and that in any case its tractors are suitable for the Army's intended use. Award has been made to the second-low bidder, Rish Equipment Company. For the following reasons, we are summarily denying the protest.

Under invitation for bids No. DABT57-81-B-0048, the Army sought two Uniloader Tractors, CASE Model 1845 or Equal. Part I, Section C, of the 21-page solicitation, issued March 13, 1981, included nine performance and three design specifications; all of the performance specifications and the first design specification appeared on page 3, with the remaining design specifications continued on page 4.

The only amendment to the solicitation, issued April 6, 1981, consisted of a cover sheet which stated that at the request of the using activity, the invitation for bids was amended to revise Part I, Section C, Description/Specifications to read "as follows: (See ATTACHED SHEET)," and which extended bid opening date until April 17, 1981. The single attached sheet was marked "Page 3 of 21." On it, the Army changed a number of specifications to incorporate a range of performance characteristics which would be considered acceptable. For example, under the original solicitation the tipping load, including bucket and material weight, was required to be not less than 3,210 pounds; under the amended solicitation, the acceptable tipping load was 3,000 to 4,000 pounds.

The Army did not change the design specification on amended page 3. This required that the loader provide good work visibility with loader lift cylinders in line with loader arms; the hydraulic cylinders were to be double acting, and the cylinder rods to have surface-hardened chrome plated rods. In addition, all linkage joints were to be lubricated for extended service intervals and the hydraulic lines were to be routed to protect against normal work environments.

The specifications on the original page 4--at issue here--were less general. They required a drive system with two hand-operated level controls, one on each side of the operator, for smooth control of power, speed, direction, and all loader functions. They stated that speed should

increase in the direction of lever movement each side of neutral, permitting gradual, pivot, and counter-rotating turns. In addition, the bucket control functions, including lift, dump, lower, hold, float, and rollback, were to be incorporated in these hand controls, with the left and right levers each controlling particular functions.

By letter of April 21, 1981, the contracting officer at Fort Eustis advised CFE that its bid on OMC (Owatonna Manufacturing Co., Inc.) Mustang loaders had been rejected because lift and tilt functions were operated by means of a foot pedal and the range of forward, reverse, and turning speeds was obtained through positioning of a center-mounted single control handle.

In its letter of protest, CFE does not contest the fact that this is an accurate description of the equipment which is offered. Rather, it argues that its loaders meet the Army's specifications since the amendment to the solicitation "can only be construed as a revision of Part I, Section C of the IFB in its entirety, and page 4 of the IFB as originally issued was thereby deleted."

We do not believe this is a reasonable interpretation of the amendment. Read literally, the cover sheet to the amended solicitation may have indicated that the description of and specifications for the loader which the Army sought were confined to the amended page 3. However, the Army was required by Defense Acquisition Regulation (DAR) § 1-1206.2(b) (1976 ed.) to set forth the salient physical, functional, or other characteristics of the brand name product which was referenced in the solicitation, and we think it is unlikely that the Army would regard the very general design specification on page 3 as including all the salient characteristics of the CASE loader.

Moreover, if the Army had intended to delete page 4, it could have explicitly indicated this and renumbered the remaining pages of the solicitation. Otherwise the amended page 3 would have been followed by the original page 5, and the legend "Page 3 of 21" on the amended page would have been meaningless. While it is unfortunate that CFE was misled, we believe that if it had any questions as to the effect of the amendment, it either had to seek clarification before the amended bid opening date or risk rejection of its bid as nonresponsive. See Rise, Inc., B-182006, January 28, 1975, 75-1 CPD 59.

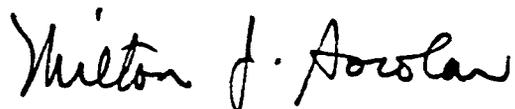
CFE further argues that even if the design specifications on page 4 remained effective, it should have been awarded the contract pursuant to DAR § 1-1206.4, which states that bids shall not be rejected because of minor differences in design or features which do not affect the suitability of products for their intended use. According to CFE, it would be impossible for anyone to determine that its loaders were not suitable for handling refuse at Fort Eustis.

We are not persuaded. The cited section of DAR requires the contracting officer to determine that products which differ from the brand name products referenced in a solicitation are equal to them in all material respects, and we have frequently held that equal products must conform to the salient characteristics listed in a solicitation in order for a bid to be regarded as responsive. Moreover, a nonresponsive bid must be rejected even if the product offered functions as well as the brand name product and satisfies the intent of the specifications. A.A. Lasher, Inc., B-193932, March 14, 1979, 79-1 CPD 182.

We cannot conclude that a loader in which certain functions are controlled by a foot pedal is equal to one in which all functions are hand-controlled, or that a center-mounted single control is equal to two controls, one on each side of the operator. We find these material differences, and CFE has neither alleged nor proved that the specifications for two hand controls were unduly restrictive (although a protest on this basis should have been filed before bid opening). We therefore find that the Army properly rejected CFE's bid.

Since we believe it is clear from CFE's initial submission that the protest is without legal merit, we have reached our decision without requiring a report from the Army. See Hardwick Knitted Fabrics, Inc., B-201245, December 16, 1980, 80-2 CPD 435.

The protest is summarily denied.



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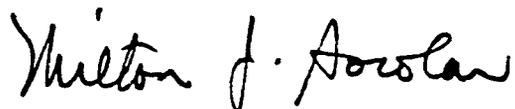
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