

Melody

**DECISION**



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

21727  
118287

FILE: B-205837

DATE: May 3, 1982

MATTER OF: Charles J. Dispenza & Associates

**DIGEST:**

Sole bid received, which offered to furnish other than the exact product called for in the solicitation, was properly rejected as nonresponsive. Although subsequent to the bidder's filing of a protest to GAO the agency determined that the specification used was overly restrictive, it may not make award to the protester because it is improper to award a contract on a basis other than that upon which bids were solicited.

Charles J. Dispenza & Associates protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. DLA400-82-B-0172, issued by the Defense Logistics Agency (DLA) for a laundry drying tumbler to be installed in the laundry building at Fort Stewart, Georgia.

The specification in the IFB required a "pass through" dryer, which has two doors to permit loading in front and unloading out the rear. Prior to bid opening, Dispenza requested that the contracting officer amend the solicitation to also allow bids on "roll over" dryers. These dryers have only a single door, but the entire tumbler rolls over, thereby repositioning the door so loading and unloading can be accomplished from the front and back. The requiring activity insisted it needed a pass through dryer, however, so the contracting officer refused to amend the IFB.

Bids were opened December 4, 1981. The sole bid received was Dispenza's which offered a roll over dryer instead of the pass through dryer required by the IFB. For this reason, Dispenza's bid was rejected as nonresponsive. Dispenza contends that its bid was responsive because it met the Government's real minimum need for a dryer which can be loaded and unloaded from the front and rear. We do not agree and, for the reasons explained below, deny the protest.

As DLA points out, the test to be applied in determining the responsiveness of a bid is "whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof," Polarad Electronics, Inc., B-204025, November 12, 1981, 81-2 CPD 401; 49 Comp. Gen. 553, 556 (1970). Here, Dispenza's bid did not pass this test since it offered to furnish a different type of dryer than that called for by the IFB.

Subsequent to the filing of this protest, DLA further reviewed this requirement and came to the conclusion that the IFB as originally issued was in fact overly restrictive. DLA reports that it has canceled the IFB and that if and when this requirement is resolicited, bids on both pass through and roll over dryers will be accepted, as will bids offering other dryers found to meet the activity's needs. While we agree with Dispenza that DLA should have made this determination before bid opening when Dispenza requested that the IFB be amended, our conclusion that the bid was properly rejected is not affected. In order to be considered responsive, Dispenza's bid was required to comport with the IFB actually issued, not the one that perhaps should have been issued.

Dispenza has argued that its bid on a "roll over" dryer should be accepted now that DLA has conceded that it cannot justify the exclusion of machines of that design. This would be improper, however, because it would result

in an award on a basis different from that advertised and would be unfair to any potential bidder which did not bid on this solicitation because its equipment was excluded by the specifications. See Seaward International, Inc., B-199040, January 16, 1981, 81-1 CPD 23; Ford Aerospace & Communications Corp., B-230672, December 19, 1980, 80-2 CPD 439.

The protest is denied.

*Milton J. Fowler*

Acting Comptroller General  
of the United States