

**DECISION**

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**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548 *2735*

**FILE:** B-211164**DATE:** March 20, 1984**MATTER OF:** Leak Detection Services, Inc.**DIGEST:**

1. Protest of agency rejection of bid, containing unsolicited model designation, as nonresponsive is denied where protester has failed to establish existence (prior to bid opening) of publicly available commercial literature which could cure ambiguity created by its insertion of unsolicited model designation.
2. Allegations concerning agency's acceptance of awardee's equipment are matters of contract administration which is responsibility of agency and not for resolution under bid protest procedures.

Leak Detection Services, Inc. (LDS), the low bidder under invitation for bids (IFB) No. N00600-83-B-0233, protests the Navy's rejection of its bid as nonresponsive and award of the contract to Physical Acoustics Corporation (PAC). LDS also objects that, in taking delivery of the PAC equipment, the agency did not enforce the inspection and acceptance standards, which differed from those set out in the IFB.

We deny the protest.

The IFB called for six valve leak detection systems. Each system consists of two types of detectors, an acoustic valve leak detector (AVLD) and a steam valve leak detector (SVLD). The protest concerns the AVLD. The Navy requiring activity initially requested that the purchasing activity procure PAC, model 5120, AVLD devices on a sole-source basis. A detailed specification bearing the annotation "Model 5120" next to the AVLD component description accompanied the purchase request. The purchasing activity decided to issue an IFB calling for an AVLD in accordance with the detailed specification because of prior competition for the item. To be responsive, a bidder need only have submitted a bid price.

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The following three bids were received:

LDS	\$17,694
PAC	30,573
Eaton Corporation	92,418

The Navy reports that during the course of a preaward survey of LDS, it became aware of the fact that LDS had proposed something other than equipment conforming either to the original specification or the PAC model 5120. After the solicitation phrase "Valve Leak Detector System, Acoustic/Steam in accordance with the specification cited herein," LDS added the words "See below for substitution" followed by:

"We propose to substitute our standard products, the Acoustic Valve Leak Analyzer (AVLA) TM and the Steam Valve Leak Detector for Item 0001. Our products provide equal or better performance with weight and volume reductions of about 49% and 35% respectively. We will provide one of each to the Navy for a 1-week technical evaluation if required."

The preaward survey was terminated and LDS's bid rejected as nonresponsive.

LDS takes the position that the following clause contained in the detailed specification was authority for its proposed substitution:

"The equipment shall consist of, but is not limited to, the following described principal components, attachments and accessories necessary to meet the operational and performance requirement specified herein."

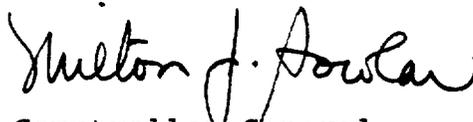
LDS argues that in the absence of an IFB requirement for descriptive literature (either alone or as part of a brand name or equal clause), the Navy should have determined the acceptability of its proposed substitution during the preaward survey rather than reject its bid and make award to PAC. LDS further argues that the AVLD which PAC delivered

did not comply with the specification and that the Navy altered the inspection procedures in order to cover the discrepancy.

The Navy reports that LDS's bid was not rejected because it proposed a substitution, but because LDS referenced a specific LDS model and failed to furnish information with its bid establishing that the designated model conformed to the specification. The Navy cites our decision Dictaphone Corporation, B-204966, May 11, 1982, 82-1 CPD 452, as controlling in this situation. We agree. There, we held that the insertion of a bidder's own unsolicited model designation on its bid made the bid ambiguous and properly rejectable as nonresponsive unless the contracting officer could determine: (1) that commercial literature covering the model designated was publicly available prior to bid opening; and (2) that the commercial literature showed that the model designated conformed to the IFB's specifications. LDS has failed to establish that any commercial literature covering its designated model existed prior to bid opening. Accordingly, the bid was properly rejected as nonresponsive.

As for the Navy's acceptance of PAC's model, this is a matter of contract administration. See Dyneteria, Inc., B-186828, July 22, 1976, 76-2 CPD 72. Regarding LDS's allegation that the Navy had known since 1980 that PAC's model 5120 did not conform to the specification, we believe that the Navy's annotation of the specification to read model 5120 puts all bidders on notice that it was acceptable and that if LDS objected to the detailed specification differing from the model 5120 it should have protested the discrepancy prior to bid opening.

Accordingly, the protest is denied.

*for*   
Comptroller General  
of the United States