

**DECISION**

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

**FILE:** B-213677

**DATE:** May 22, 1984

**MATTER OF:** Jensen Corporation

**DIGEST:**

1. Where protester bid a two-roll flatwork commercial ironer in response to a specification which called for a four-roll ironer, bid was properly rejected as nonresponsive.
2. Allegation that it was improper for agency to use design specifications as opposed to performance specifications will not be considered because it was untimely raised after bid opening.

Jensen Corporation (Jensen) protests the rejection by the Sacramento Army Depot (SAAD), Sacramento, California, of its low bid as nonresponsive to contract line item (CLIN) No. 0007 under invitation for bids (IFB) No. DAAG08-83-B-0023 and award to International Trade Operations Overseas (International). We dismiss part and deny part of the protest.

The IFB was issued on October 18, 1982, for various items of laundry equipment. After 13 amendments, bid opening was held on July 14, 1983. CLIN 0007 called for a commercial, four-roll, flatwork ironer in accordance with federal specification No. 00-I-2100, dated March 30, 1979. Although Jensen was the apparent low bidder on CLIN 0007, SAAD rejected Jensen's bid because it offered a two-roll ironer instead of the ironer specified. International, which was the next low, responsive bidder, received the award.

Jensen essentially contends that notwithstanding the fact it offered a two-roll ironer, its "Superstar" two-roll flatwork ironer reflects the state of the art in flatwork ironers. Jensen argues that the diameter of the rolls and the production capability of the ironer are more important than the number of rolls. Jensen therefore asserts that its bid should have been accepted because its ironer with two 27-1/2-inch diameter rolls measuring 14 feet 4-1/2 inches in overall depth is superior in production capability to the American Hypro II with four 19-5/8-inch diameter

rolls measuring 10 feet 42 inches that SAAD accepted, and its bid was at a considerable cost savings to the government. Jensen suggests that it was improper for the agency to utilize design specifications that did not take into account the performance capabilities of its product.

To be responsive, a bid as submitted must represent an unequivocal offer to perform the exact thing called for in the solicitation such that acceptance of the bid will bind the contractor to perform in accordance with the solicitation's material terms and conditions. Star Line Enterprises, Inc., B-210732, October 12, 1983, 83-2 CPD 450. Here, the agency properly rejected Jensen's bid as nonresponsive because the IFB called for a four-roll flatwork ironer and Jensen offered a two-roll ironer.

While Jensen points out that the descriptive literature in the bid reflected an ironer with the capability of accommodating four rolls, clearly Jensen's bid offered a two-roll ironer. The literature, at the very best, created an ambiguity which required rejection of the bid. See Emerson Electric Co., B-212659, November 4, 1983, 83-2 CPD 529.

As to whether acceptance of the bid would result in a monetary savings to the government, we have held that the acceptance of a bid which deviates from the specifications would be unfair to the other bidders and that the importance of maintaining the integrity of the competitive bidding system outweighs the advantage of a monetary savings that would result if a material deficiency is waived or ignored. Star-Line Enterprises, Inc., supra. For the same reason, it would be improper for the agency to consider the performance capability of Jensen's ironer because this factor was not specified in the solicitation and bids may not be properly evaluated on a basis that is not stated in the solicitation. MEMM General, Inc., B-210939, May 31, 1983, 83-1 CPD 579.

Finally, although Jensen challenges the propriety of the agency using design specifications as opposed to performance specifications, this allegation is untimely because it involves a solicitation impropriety apparent prior to bid opening which should have been filed before that date. See 4 C.F.R. § 21.2(b)(1) (1983).

Accordingly, the protest is denied in part and dismissed in part.

*Milton J. Fowler*  
for Comptroller General  
of the United States