

**DECISION**



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

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**FILE:** B-217061

**DATE:** April 5, 1985

**MATTER OF:** C.J. Harter & Son/Machinery, Inc.

**DIGEST:**

1. Where unsolicited descriptive literature included with bid indicates that the product to be furnished does not comply with the IFB specifications, the bid must be rejected as nonresponsive.
2. A nonresponsive bid may not be accepted even though it would result in cost savings to the government, since acceptance would be contrary to the maintenance of the competitive bidding system.
3. Determination of price reasonableness is a matter of administrative discretion which will not be questioned unless the determination by the procuring agency is unreasonable.

C.J. Harter & Son/Machinery, Inc. (Harter), protests the rejection of its bid as nonresponsive by the Department of the Air Force under invitation for bids (IFB) No. F41800-84-B-0209 for the procurement of three computer numerically controlled turning center lathes. In addition, Harter protests award of the contract to Monarch Machine Tool Co. (Monarch) on the basis that Monarch's bid, which was about 35 percent higher than Harter's, was unreasonable as to price.

The protest is denied.

IFB No. F41800-84-B-0209 was issued by the San Antonio Air Force Station, Texas, for the procurement of three numerically controlled turning center lathes together with operator and maintenance training and programming services. Harter submitted the low bid of \$333,375 but the Air Force rejected its bid as nonresponsive and made award to Monarch, the fourth lowest bidder, as the low responsive

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bidder at a price of \$446,946. Harter had submitted as its bid only pages A-1 and B-1 of the IFB: page A-1 is Standard Form 33 (revised 10/83) and page B-1 is the schedule on which the bid prices were entered. When Harter protested the rejection of its bid to the Air Force, the agency advised Harter that its bid had been rejected as nonresponsive because it did not conform to all the material terms and conditions of the IFB, in particular, the delivery schedule. Harter then timely protested to our Office. In its report to our Office concerning the protest, the Air Force has taken the position that Harter's bid was nonresponsive not only for the reason initially given but also because unsolicited descriptive literature which Harter submitted with its bid at the best created uncertainty as to whether the product it offered would meet certain material specification requirements.

We conclude that the bid was nonresponsive for the latter reason. It is therefore not necessary for us to determine whether pages A-1 and B-1 of the IFB incorporated by reference all the material terms and conditions of the IFB.

The IFB schedule at page B-1 solicited bids on computer numerically controlled turning center lathes in accordance with Military Specification MIL-L-80219A, as amended. In its bid, Harter offered the CNC Turning Center (lathe) model Baron 25 manufactured by LeBlond-Makino. Although not required by the IFB, Harter submitted with its bid descriptive literature on the LeBlond-Makino Baron 25. In its technical evaluation, the agency determined that the descriptive literature submitted by Harter with its bid created an uncertainty as to whether the Baron 25 lathe met many of the material requirements of the specifications. For example, the IFB specifications at section 3.4.6 provide that slide departures shall be from a full floating zero reference point and that slide acceleration and deceleration shall be automatically controlled. The Air Force states that the descriptive literature supplied by Harter on the Baron 25 model does not indicate the availability of either a full floating zero reference point or automatically controlled slide acceleration or deceleration. As a further example of the uncertainties created by the descriptive literature, paragraph 3.4.6.1 of the IFB specifications provide that the memory capacity for the system shall be in accordance with paragraph 6.2.1, which provides that memory capacity shall not be less than 1,000

feet of part program storage. The literature submitted by Harter shows that the Baron 25 is available with three control options, none of which offers as a standard feature the required 1,000 feet of part program storage memory. General Numeric (GN) system 3T, model F, does not offer a part program storage memory capacity of at least 1,000 feet. The literature shows that model GN GTB2 has a standard part program storage memory of 66 feet with an optional memory capacity of 1,050 feet available at a cost of \$7,190. The GE 2000T control has a part program storage memory of 64 feet which can be expanded to 1,092 feet with an optional memory capacity which costs \$5,095.

Where unsolicited literature contains the same model number and name as the equipment offered in the bid, there is a sufficient relationship between the bid and the descriptive literature so that the literature may not be disregarded in evaluating the responsiveness of the bid. See LogE/Spatial Data Systems, Inc., B-205016, May 17, 1982, 82-1 C.P.D. ¶ 465.

To be responsive a bid as submitted must represent an unequivocal offer to meet the IFB specifications. See E.C. Campbell, Inc., B-185611, Mar. 4, 1976, 76-1 C.P.D. ¶ 155. Where the inclusion of a brochure creates doubt as to whether some of the specified features required by the IFB would be included because they either were not mentioned in the literature or were described as "options" the bid is properly for rejection as nonresponsive. See Hughes-Henry Equipment Co., B-200049, Nov. 5, 1980, 80-2 C.P.D. ¶ 338 and Mars Data Systems, B-198812, June 4, 1980, 80-1 C.P.D. ¶ 385. Harter has not attempted to rebut the Air Force's analysis of its descriptive literature. On the basis of this record, therefore, we conclude that Harter's bid was properly rejected by the agency as nonresponsive.

Harter also points to the price differential between its bid and Monarch's as support for its contention that it should have been awarded the contract, and argues that, at the very least, the solicitation should have been canceled since Monarch's bid was about 35 percent more than Harter's.

The fact that a cost savings would result to the government from accepting the low bid does not provide a proper basis for accepting that bid. We have consistently held that a nonresponsive bid may not be accepted even though it would result in monetary savings since acceptance

would be contrary to the public interest in maintaining the integrity of the competitive bidding system. Kaydon Corporation, B-214920, July 11, 1984, 84-2 C.P.D. ¶ 41.

Concerning Harter's alternate request that the IFB be canceled, Federal Acquisition Regulation, 48 C.F.R. § 14.404-1(c)(6) authorizes cancellation where "all otherwise acceptable bids received are at unreasonable prices." We have held that a determination concerning price reasonableness is a matter of administrative discretion which our Office will not question unless the determination is unreasonable or there is a showing of bad faith or fraud. Milum Textile Services, B-207043, Aug. 10, 1982, 82-2 C.P.D. ¶ 124. The record shows that eight bids were received under the IFB and that four other bidders submitted bids higher than Monarch. Further, the agency determined that Monarch's bid reflected the apparent market conditions. Under the circumstances, we find nothing in the record which supports Harter's contention that Monarch's bid should have been rejected and that the solicitation should have been canceled on the basis that Monarch's bid price is unreasonable.

*for* *Raymond E. ...*  
Harry R. Van Cleave  
General Counsel