

**DECISION**



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

**FILE:**

B-220036

**DATE:** December 19, 1985

**MATTER OF:**

Harnischfeger Corporation

**DIGEST:**

1. Where an invitation for bids requires the submission of descriptive literature to establish conformance with the material specifications of the solicitation, a bid must be rejected as nonresponsive if the literature submitted evidences nonconformity with the specifications or is otherwise ambiguous.
2. The inadequacy of submitted descriptive literature may not be cured by explanations offered after bid opening under the fundamental principle of sealed bidding that responsiveness must be determined on the basis of the bid as submitted.

Harnischfeger Corporation protests the award of a contract to Grove Manufacturing Company under invitation for bids (IFB) No. DACW01-85-B-0106, issued by the Army Corps of Engineers. The procurement was for the acquisition of two 20-ton self-propelled hydraulic cranes. Harnischfeger asserts that the Corps improperly rejected its apparent low bid as nonresponsive, and the firm also contends that Grove Manufacturing's bid was nonresponsive. We deny the protest in part and sustain it in part.

Section C of the IFB set forth certain mandatory specifications that the offered equipment had to meet, and bidders were required to submit descriptive literature with their bids to demonstrate compliance with those specifications in accordance with the Federal Acquisition Regulation, 48 C.F.R. § 14.202-5 (1984). Bidders were cautioned that the failure of their descriptive literature

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to show such compliance would require rejection of their bids. Bids were opened on July 31, 1985, and the results were as follows:

(1) Harnischfeger Corp.	\$213,700.00
(2) American Equipment	220,471.20
(3) Grove Manufacturing	221,922.00
(4) Pettibone Corp.	225,630.00
(5) Gilchrist Machinery	258,956.00
(6) FMC Corp.	275,800.00

Both Harnischfeger and American Equipment offered to furnish the P&H Omega 120D 20-ton crane. However, the contracting officer, upon examination of the submitted descriptive literature for that model, determined that it did not meet a material specification of the IFB and, accordingly, rejected both bids as nonresponsive.

At issue in this case, the IFB provided that the crane's hydraulic system was required to have a full-flow return line replaceable cartridge filter with bypass protection to filter all hydraulic fluid to a 25 micron rating. The descriptive literature for the P&H Omega crane stated that the model's hydraulic system filtered "all but 44 gpm [gallons per minute] . . . to 7 microns on return to the reservoir." The contracting officer determined from this statement in the descriptive literature that the crane did not meet the full-flow filtering requirement since it indicated that the remaining 44 gpm was not filtered. Accordingly, the Corps awarded the contract to Grove Manufacturing, the next lowest, responsive bidder.

Harnischfeger urges to the contrary that the statement in its descriptive literature did not indicate that the P&H Omega 120D did not meet the full-flow filtration requirement. Rather, Harnischfeger states that the remaining 44 gpm in fact is filtered to 10 microns, which exceeds the agency's minimum requirement for 25 micron filtration. Harnischfeger points out that it informed the contracting officer of this by letter after receiving notice of the agency's rejection of its bid. Harnischfeger contends that it was unreasonable for the contracting officer to conclude solely from the statement in the literature that the firm would not comply with the full-flow filtration requirement.

### Analysis

It is well-settled that an agency properly rejects a bid as nonresponsive where the bidder submits descriptive literature as required that shows that the product it is offering does not conform to the material specifications set forth in the IFB. A.O. Stilwell Co., Inc., B-216804, Apr. 30, 1985, 85-1 CPD ¶ 486. This is because of the fundamental principles of sealed bidding that responsiveness concerns a bidder's unequivocal offer to provide supplies or services in total conformity with the material terms and conditions of the solicitation, and that responsiveness must be determined on the basis of the bid as submitted. Continental Telephone of California, B-213255, Apr. 17, 1984, 84-1 CPD ¶ 428. Thus, even if the offered product in fact possesses the required features, bid rejection is required when the literature does not clearly show conformance with the requirements. Id. We will not disturb the agency's determinations concerning the adequacy of required descriptive literature absent a clear showing of unreasonableness, abuse of discretion, or a violation of procurement statutes and regulations. Washex Machinery Corp., B-214591.2, Sept. 25, 1984, 84-2 CPD ¶ 352.

Here, we can raise no objection to the agency's determination that the descriptive literature submitted by Harnischfeger failed to show that its offered crane met the full-flow filtration requirement. The statement in the literature explicitly referred to all but 44 gpm. Although we recognize that the literature does not state that the remaining 44 gpm of hydraulic fluid is not filtered, the literature fails to demonstrate affirmatively that the remaining fluid is filtered, or, if in fact filtered, that it is filtered to 25 microns as required by the IFB.

Accordingly, since Harnischfeger's submitted literature evidenced nonconformity with a material requirement of the IFB, or, at best, created an ambiguity with regard to meeting that requirement, the contracting officer was compelled to reject the bid as nonresponsive. Emerson Electric Co., B-212659, Nov. 4, 1983, 83-2 CPD ¶ 529. Although the firm furnished a letter to the agency after bid opening stating that the remaining fluid was actually filtered to 10 microns, this is of no consequence because a nonresponsive bid may not be cured by explanations offered after bid opening. E.I. du Pont de Nemours & Co., Inc., B-208263, Dec. 27, 1982, 82-2 CPD ¶ 578.

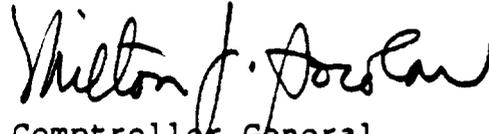
However, we find merit in Harnischfeger's assertion that Grove Manufacturing's bid was nonresponsive due to a failure of the firm's descriptive literature to demonstrate compliance with certain material specifications. Harnischfeger contends that Grove Manufacturing's literature failed to show that the firm's offered crane met the full-flow filtration requirement, as well as the requirements for a diesel engine with replaceable wet-type cylinder liners, an engine spark arrestor muffler, and rim-type cast steel wheels.

With regard to the full-flow filtration requirement, Grove Manufacturing's literature for its offered crane provided that the hydraulic filter was a "return line replaceable cartridge with bypass protection and filter bypass indicator. 25 micron rating. Tank mounted." We need not reach the issue of whether this language, as the agency asserts, clearly indicates the filtration of all hydraulic fluid because we find that Grove Manufacturing's literature was deficient in other specification areas. Although the literature stated that the engine was a General Motors Model GM4-53N diesel, and provided various specifications for that engine, it did not demonstrate that the engine had wet-type replaceable cylinder liners. The literature did not provide any reference to the type of wheels being provided, nor did it state that the engine was equipped with a spark arrestor muffler. We also independently note that Grove Manufacturing's literature provided that the crane was equipped with 14.00 X 24" tires as standard equipment (with larger sizes optional), whereas the solicitation required a minimum tire size of 16.00 X 24". We find no other indication in its bid that Grove Manufacturing was offering to provide the crane equipped with the larger-size tires at the stated bid price. Cf. IFR, Inc., B-203391.4, Apr. 1, 1982, 82-1 CPD ¶ 292 (bid clearly obligated bidder to supply at a firm price modified version of commercial item meeting all requirements including features listed as options in bidder's catalog).

Because descriptive literature was required to be supplied here to establish conformance with the specifications, we believe that the Corps acted unreasonably in determining that Grove Manufacturing's literature was adequate to demonstrate compliance with the specifications discussed above. We note that none of these specifications are indicated to be other than material. Thus, the Corps apparently did not review Grove Manufacturing's submitted literature with an equal degree of scrutiny, and the firm's bid should not have been accepted.

Accordingly, by separate letter of today, we are recommending to the Secretary of the Army that the agency terminate Grove Manufacturing's present contract for the convenience of the government and resolicit the requirement.

The protest is denied in part and sustained in part.

A handwritten signature in black ink, reading "Milton J. Jordan". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General  
of the United States