

**DECISION**

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

**FILE:** B-220369

**DATE:** February 5, 1986

**MATTER OF:** Heyl & Patterson

**DIGEST:**

Protest contending that awardee's bid was nonresponsive because it was accompanied by unsolicited technical brochures describing systems not in compliance with the specifications is denied. The bid when read with the brochures was not ambiguous because the brochures cannot reasonably be interpreted as describing systems the awardee intended to deliver.

Heyl & Patterson (H&P) protests the award of a contract to Westmont Industries by the Department of the Navy under invitation for bids (IFB) No. N62472-85-B-1471. H&P contends that Westmont's low bid should have been rejected as nonresponsive because it was qualified by attached unsolicited literature describing products that did not comply with the IFB's specifications.

We deny the protest.

The IFB asked for bids to provide 85 small cranes and monorail systems, including options, for the Naval Submarine Base, Kings Bay, Georgia. The cranes were to be of various types and lifting capacities and had to be designed to operate with controls permitting three distinct hoist speeds. The IFB further provided that before fabrication could commence, the contractor had to conduct an independent design verification and obtain the Navy's approval of the design and fabrication drawings to which the cranes would be built. The IFB warned the bidders that if a bid included any identifying data, such as part numbers, in connection with the description of the equipment, the bid would be considered nonresponsive, unless the bid clearly indicated that the equipment offered was in complete conformance with the specifications.

Westmont's bid took no exceptions to the specifications and made no reference to four brochures submitted with its standard bid form. One brochure, which is not in

controversy, was a general description of Westmont's capabilities. The other three brochures each contained technical descriptions of previously manufactured crane systems that had stepless variable speed controls.

H&P contends that because Westmont submitted the descriptive technical brochures without any indication that they were not intended to qualify its bid, it is reasonable to conclude that Westmont intended to provide crane systems with stepless variable speed controls. H&P asserts that this conflicts with the specifications requiring that the cranes operate at three distinct speeds because it is impossible to obtain distinct speeds with such controls. Westmont insists that the brochures were provided only to show its capability to perform the work required by this IFB.

The Navy concluded that because the brochures described cranes Westmont had provided to other customers and did not address the IFB's requirements, which were for cranes with capacities ranging from 1/2 to 10 tons, they were submitted only to show Westmont's past experience and general capabilities. It therefore made the award to Westmont.

Generally, where unsolicited descriptive literature appears to describe the equipment offered in the bid, the literature must be read as a part of the bid and if it describes a product that may not conform to the IFB's specifications, the bid is ambiguous and must be rejected as nonresponsive. McGraw-Edison Co., et al., B-217311 et al., Jan. 23, 1985, 85-1 CPD ¶ 93. This is so because a bid is responsive only if it is an unequivocal offer to meet all of the material terms and conditions of the IFB. Data Controls/North Inc., B-205726, June 21, 1982, 82-1 CPD ¶ 610.

This general rule, however, does not require that a bid be automatically rejected as nonresponsive if it includes unsolicited descriptive literature; rather, the bidder's intent must be ascertained from the entire bid including the unsolicited literature. 49 Comp. Gen. 851 (1970); Brown Boveri Electric, Inc., B-209338, Apr. 1, 1983, 83-1 CPD ¶ 342. If the literature creates an ambiguity as to what the bidder intended, or if the material is reasonably susceptible of being interpreted as reflecting the bidder's intention to have the literature treated as a qualification of the bid, the bid must be rejected as nonresponsive. Id.

In our view, Westmont's bid when read with the unsolicited brochures was not ambiguous because the brochures could not reasonably be interpreted as reflecting an intention to qualify Westmont's bid. None of the brochures cited a model number or gave any indication that it described equipment that Westmont would deliver. One of the brochures described a system made up of 44 cranes with lifting capacities of 15 to 20 tons that had been delivered to the Department of Energy. The second brochure pertained to a 10 ton capacity crane system and indicated that it was for "BLDG 4-20" and "BLDG 4-21." The Navy points out that there are no buildings at Kings Bay with such numbers. The third brochure described a 34 ton capacity system but did not indicate for whom it was made. The IFB required systems with lifting capacities of only 1/2, 2, or 5 tons, except for two systems with 10 ton capacities. Under these circumstances, we agree with the Navy that the unsolicited descriptive literature submitted by Westmont clearly was not intended to describe the equipment the firm intended to deliver, and therefore did not render its bid nonresponsive.

The protest is denied.

*for* *Seymour E. Frow*  
Harry R. Van Cleve  
General Counsel