

DECISION



12449 P. Lammie
Proc I
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195959

DATE: January 7, 1980

MATTER OF: Devault Manufacturing Company

DIGEST:

Rejection of
[Protest of a Bid as Nonresponsive Due to
Descriptive Literature]

Rejection of bid as nonresponsive because of information contained in unsolicited descriptive data was proper where IFB required crane with "hinged hydraulic-operated" outriggers but descriptive literature showed that crane offered used "telescopic box-type (out and down)" outriggers. Descriptive literature could not be disregarded under FPR § 1-2.202-5(f) because same model number referenced in bid and descriptive literature showed sufficient relationship between descriptive data and bid.

Devault Manufacturing Company (Devault) pro-3564 tests the rejection of its bid as nonresponsive by the Department of the Interior under invitation for bids (IFB) No. 10-S0127 for the procurement of a truck mounted hydraulic crane with flatbed. 33

The protest is denied for the following reason.

Devault submitted the lowest bid in response to the IFB. Devault's bid contained a reference on page 15 to "Devault Model 3010 26-63, with customer's choice of truck chassis: Mack, Peterbilt or Favco." Though there was no requirement in the IFB for descriptive literature to be provided by bidders, Devault included with its bid a document entitled "Devault Utility Crane, Model 3010 26-63, 23-15-15-10, Technical Specifications." Because of the reference to Devault model 3010

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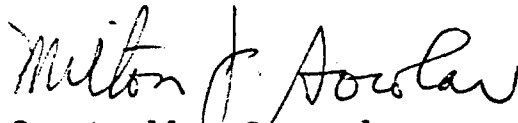
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26-63 at page 15 of Devault's bid, Department of the Interior officials reviewed the descriptive literature/technical specifications submitted by Devault to determine if Devault model 3010 26-63 conformed to the technical requirements of the IFB. It was determined that, since Devault model 3010 26-63 used "telescopic box-type (out and down)" outriggers, Devault model 3010 26-63 did not conform to the IFB requirement for "hinged hydraulic-operated" outriggers capable of being placed at a 30-degree angle from the vertical. The contracting officer considered this requirement to be essential due to the limited space in the intended area of use. The contracting officer, therefore, rejected Devault's bid as nonresponsive and awarded the contract to the second-low, responsive bidder.

Devault protests that the descriptive literature provided with its bid was not intended to qualify the bid but was only provided to show the contracting agency the type, size and capacities of the equipment Devault could supply. Devault contends that its bid took no exception to any of the specifications contained in the IFB and that it fully intended to supply the hinged hydraulic-operated outriggers required in the IFB rather than the telescopic box-type outriggers described in the descriptive literature accompanying its bid. Devault argues that, since section "J" of the Special Provisions of the IFB required the contractor to provide the Government with assembly drawings and specifications prior to construction of the crane, the Government was assured that the crane Devault would supply under the contract would fully conform to all requirements of the IFB.

Under section 1-2.202-5(f) of the Federal Procurement Regulations (1964 ed., amend. 10), unsolicited descriptive literature accompanying a bid should not be considered as qualifying the bid unless it is clear from the bid or accompanying papers that the bidder intended the descriptive literature to qualify the bid.

Where the unsolicited literature contains the same model number as equipment offered in the bid, there is a sufficient perceivable intended relationship between the bid and the descriptive literature that the literature may not be disregarded under this regulation. See Joy Manufacturing Company, B-191902, August 17, 1978, 78-2 CPD 127. Since the protester cited Devault model 3010 26-63 on page 15 of the bid and the descriptive literature included the technical specifications for the same Devault model, we think the contracting officer was required to consider the descriptive literature as qualifying Devault's bid. When the technical review of the literature showed that Devault model 3010 26-63 did not conform to a material IFB requirement, the contracting officer properly rejected the bid. The fact that the contractor would be required to provide detailed drawings and specifications before beginning construction of the crane is irrelevant since the contractor would be bound only to the terms of its bid upon acceptance of that bid by the Government.



For The Comptroller General
of the United States