

**DECISION**

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

*26261*

**FILE:** B-212789**DATE:** September 20, 1983**MATTER OF:** John C. Dorsey, Inc.**DIGEST:**

Failure to furnish descriptive literature required by the solicitation by bid opening for the evaluation of the bid renders the bid nonresponsive and acceptance of the literature by the agency after bid opening would be improper.

John C. Dorsey, Inc. (Dorsey), protests rejection of its bid as nonresponsive and award of contract No. 54-3K06-3-118 to the second low bidder by the Department of Agriculture (Agriculture) for the supply and installation of 19 boilers. Dorsey's bid was rejected as nonresponsive because descriptive literature required by the invitation for bids (IFB) did not accompany the bid.

We deny the protest. We do so without obtaining a report from the contracting agency, in accordance with section 21.3 of our Bid Protest Procedures, 4 C.F.R. § 21.3, as amended January 17, 1983, 48 Fed. Reg. 1931 (1983), since it is clear from the material Dorsey furnished that the protest is without legal merit.

The IFB provided that descriptive literature was required to establish, for purposes of evaluation and award, the details of the product which the bidder proposes to furnish to satisfy the technical specifications and must be furnished with the bid and before the time set for opening of bids. The IFB also notified bidders that failure to furnish descriptive literature by the time specified would require rejection of the bid except as provided in the late bid provision.

Dorsey alleges that it furnished the descriptive literature 1 day after bid opening. The literature was not furnished prior to bid opening because Dorsey's supplier had not furnished the literature to Dorsey. Dorsey contends that the late submission of descriptive literature is a minor defect which is waivable and should have been waived, and literature has not been required at the time of bid opening in past bids on similar solicitations. Dorsey also

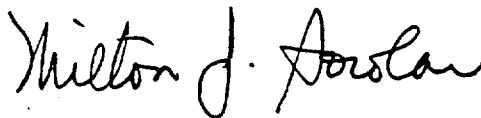
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alleges that unidentified Agriculture personnel indicated that the descriptive literature would be acceptable after bid opening, and the agency did accept the offered literature within 24 hours of bid opening.

However, Dorsey was notified by the IFB that the descriptive literature was needed for the evaluation of the bid and must be furnished prior to bid opening. The IFB also notified Dorsey that failure to furnish the descriptive literature before bid opening would require rejection of the bid with exceptions not here pertinent.

Under these circumstances, we have held that failure to furnish the descriptive data renders the bid nonresponsive and requires rejection of the bid. See Northeast Contracting Associates, Inc., B-211370, May 10, 1983, 83-1 CPD 500; Delta Electronic Control Corporation, B-188796, November 28, 1977, 77-2 CPD 412.

Even if an official of Agriculture advised that descriptive literature would be acceptable after bid opening, subsequent consideration of the literature would be improper in light of the IFB provisions. To permit Dorsey to submit information relative to its bid after bid opening would confer an unfair competitive advantage upon Dorsey by permitting it to affect the responsiveness of its bid after bid opening and Dorsey would also gain the choice of accepting or rejecting the contract after bids have been exposed by sending or not sending the literature. See Northeast Contracting Associates, Inc., supra.

for   
Comptroller General  
of the United States