



Comptroller General  
of the United States

Washington, D.C. 20548

*Ad. Com  
14569.80*

## Decision

**Matter of:** National Electrical Construction, Inc.

**File:** B-245943

**Date:** January 22, 1992

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Arlen L. Brammer, Esq., Smith and Carr, for the protester.  
James A. Cillessen, Interstate Electrical Contractors, Inc.,  
an interested party.  
Greg Petkoff, Esq., and Joseph M. McDade, Jr., Esq.,  
Department of the Air Force, for the agency.  
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the  
General Counsel, GAO, participated in the preparation of the  
decision.

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### DIGEST

Protest that low bid should be rejected as nonresponsive because bidder did not submit descriptive literature with its bid is denied where solicitation did not provide that descriptive literature was required for bid evaluation purposes, and literature was not necessary to evaluate the bid.

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### DECISION

National Electrical Construction, Inc. protests the award of a contract to Interstate Electrical Contractors, Inc. under invitation for bids (IFB) No. F05604-91-B-0271, issued by the Department of the Air Force for construction services, including equipment, for the automatic transfer of electrical power. National argues that Interstate's bid must be rejected as nonresponsive for failure to include descriptive literature called for under the IFB specifications.

We deny the protest.

The solicitation, issued August 9, 1991, did not contain the standard descriptive literature clause that is required by the Federal Acquisition Regulation (FAR) § 14.201-6(p)(1) when descriptive literature is necessary for bid evaluation purposes. However, the IFB specifications requested in two sections that bidders "[s]ubmit manufacturer's printed literature with bid" for the automatic high voltage switch and interrupter switchgear.

Four bids were timely received by the September 9 bid opening date, and only National's bid contained descriptive literature. Interstate submitted the low bid of \$322,600, and National submitted the second highest bid of \$373,750. At bid opening, National confirmed that Interstate did not submit descriptive literature as requested by the specifications.

The contracting officer determined that Interstate's failure to submit descriptive data was a minor informality since the agency did not intend the data to be used in the bid evaluation, and because the solicitation did not contain the required descriptive literature clause. The contracting officer did subsequently request Interstate to submit the manufacturer's data, and award was made to Interstate on September 30. National protests the award of the contract to any other bidder on the grounds that it submitted the only responsive bid.

To be responsive a bid must represent an unequivocal offer to provide the exact thing called for in the IFB such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Data Express, B-234685, July 11, 1989, 89-2 CPD ¶ 28. Where descriptive literature is required to be supplied for use in bid evaluations, a bid may be rejected as nonresponsive if the bid and the data submitted with the bid do not clearly show that the offered product complies with the specifications. Id.

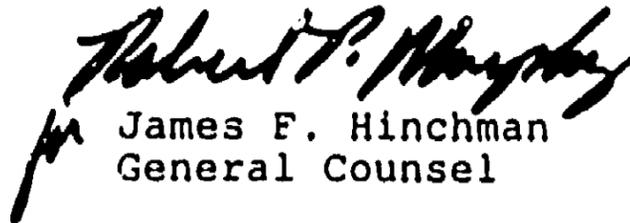
The literature in this case was, in some sense, solicited in that the specifications called for manufacturer's data to be submitted with the bids. However, the FAR requires that where descriptive literature is needed for bid evaluation purposes, the contract file must set forth the reasons why product acceptability cannot be determined without submission of such literature, and the IFB must:

"Clearly state (i) what descriptive literature is to be furnished, (ii) the purpose for which it is required, (iii) the extent to which it will be considered in the evaluation of bids, and (iv) the rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature furnished does not comply with the requirements of the invitation." FAR § 14.202-5(d)(1).

Since the IFB did not provide what the literature would be used for, the extent to which it would be considered, or the applicable rules if a bidder failed to submit it, the IFB failed to effectively require descriptive literature, and Interstate's failure to submit such data with its bid, or its submission of the data after bid opening, does not render its bid nonresponsive. Futura Sys. Inc., 70 Comp. Gen. 365 (1991), 91-1 CPD ¶ 327. Since literature that is not needed for bid evaluation generally is considered informational only, the failure to furnish it does not prevent acceptance of the bid where the bidder would be otherwise bound to perform in accordance with the IFB. Colt Indus., B-225483, Mar. 16, 1987, 87-1 CPD ¶ 288.

Here, the agency determined that Interstate was bound by its bid to perform in accordance with the IFB and National does not argue that Interstate's bid otherwise takes exception to the terms and conditions of the solicitation.

The protest is denied.

  
James F. Hinchman  
General Counsel