



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Smith-Midland Corporation

**File:** B-252394.2

**Date:** July 23, 1993

Roderick M. Smith for the protester.  
Paul D. Warring, Esq., Department of the Air Force, for the agency.  
Katherine I. Riback, Esq., Daniel Gordon, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that in a brand name or equal procurement the agency improperly determined that the proposed awardee's "equal" building met a particular salient characteristic is denied where descriptive literature submitted by the proposed awardee showed that its proposed building complied with the applicable specification.

### DECISION

Smith-Midland Corporation protests the proposed award of a contract to Concrete Systems, Inc., under the Department of the Air Force's invitation for bids (IFB) No. F49642-93-B-A016, issued on a brand name or equal basis for one precast concrete building. Smith-Midland contends that Concrete Systems's proposed "equal" building failed to meet a salient characteristic listed in the solicitation and that, therefore, its bid should have been rejected as nonresponsive.

We deny the protest.

The solicitation specified the Smith-Midland Esi-Span Model 2040 precast concrete building as the brand name product, listed the salient characteristics that had to be satisfied by any product offered as equal to the brand name item, and required that descriptive literature be submitted with the bid to demonstrate compliance with those characteristics.

In pertinent part, the salient characteristics called for the "roof overhang to be at least 2-1/2" on all sides to include drip edge."

Seven bids were submitted by the January 22, 1993, bid opening date. The apparent low and third low bid were determined to be nonresponsive for failure to include descriptive literature. Concrete Systems was the second low bidder at \$33,705 and Smith-Midland was fourth low at \$39,500. Concrete Systems submitted with its bid descriptive literature describing a precast concrete building with a 4-inch roof overhang on all sides. After reviewing the matter, the agency determined that Concrete Systems's bid met all the IFB requirements.

Smith-Midland protests that Concrete Systems's proposed "equal" building fails to meet the requirement that the "roof overhang . . . be at least 2-1/2" on all sides to include drip edge." Specifically, Smith-Midland contends that the roof Concrete Systems proposed as an "equal" building does not have a drip edge and therefore should be rejected as nonresponsive.


In a brand name or equal procurement, the procuring agency is responsible for evaluating the required descriptive literature submitted by offerors of equal items and ascertaining if it provides sufficient information to determine whether the offered items are in fact equal to the brand name products. VG Instruments, Inc., B-241484, Feb. 7, 1991, 91-1 CPD ¶ 137. In making this determination, the agency enjoys a degree of discretion which we will not disturb unless we find that the determination was unreasonable. Id. A protester's mere disagreement with an agency's technical judgment does not provide a sufficient basis for concluding that the agency acted unreasonably in accepting or rejecting the bid. Philips Medical Sys. North Am. Co., B-237598.2; B-237599.2, Apr. 17, 1990, 90-1 CPD ¶ 395.

Here, we find that the agency's conclusion that Concrete Systems's product complied with the specifications was reasonable. The salient characteristic required a "roof overhang to be at least 2-1/2" on all sides to include a drip edge." The drip edge was not further described in the IFB or the descriptive literature of the brand name bidder. The agency's determination was that Concrete Systems's proposed "equal" roof, that included a 4-inch overhang on all sides, met the solicitation's overhang requirement.

When the desired feature is described only in general terms, the requirement need not be exactly met by the "equal" product; it need only be functionally equivalent to the

brand name product. See Cohu, Inc., B-199551, Mar. 18, 1981, 81-1 CPD ¶ 207. The agency explains that the purpose of the salient characteristic at issue here is to keep rain from running down the sides of the building and to prevent leakage into the interior of the building. The agency determined that the features of the roof of Concrete Systems's proposed "equal" building, with its 4-inch overhang on all sides, meet these needs. The protester does not argue that the roof of Concrete Systems's building is in any way functionally defective, only that the roof of the proposed "equal" building lacks a drip edge. We see no basis to object to the agency's conclusion that the awardee's roof met the requisite functional requirement.<sup>1</sup>

The protest is denied.

  
for James F. Hinchman  
General Counsel

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<sup>1</sup>We note that while Smith-Midland asks for an opportunity to rebid on the relaxed solicitation requirement (the current IFB requirements minus the drip edge provision), it does not contend that it could or would have offered a precast concrete building without a drip edge at a lower price. In these circumstances, even if the IFB were read to require a drip edge and the agency waived this requirement in proposing award to Concrete Systems, Smith-Midland does not appear to have been prejudiced as a result.