



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Smith-Midland Corporation

**File:** B-252392.2

**Date:** July 22, 1993

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

### DIGEST

Bid of an equal item under a brand name or equal procurement was properly determined to be responsive where the bid and associated descriptive literature reasonably establish that a listed model number expressed the dimensions of the proposed equal building, and that these dimensions satisfy the dimensional requirement set forth under the solicitation's salient characteristics.

### DECISION

Smith-Midland Corporation protests the proposed award of a contract to Michigan Pre-Cast Concrete, under invitation for bids (IFB) No. F49642-93-B-0005, issued by the Department of the Air Force for 15 concrete buildings. Smith-Midland contends that Michigan's bid should have been rejected as nonresponsive.

We deny the protest.

The solicitation specified the Smith-Midland Easi-Set Model 13134 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 precast buildings with dimensions of 12' x 20' x 8' (plus or minus 1 inch).

Seven bids were submitted by the January 14, 1993, bid opening date. The apparent low bidder was determined to be nonresponsive for failure to include descriptive literature

with its "equal" bid. Michigan Pre-Cast Concrete was the second low bidder at \$118,395, and Smith-Midland was third low at \$132,810. Michigan Pre-Cast Concrete submitted a bid offering its M.P.C. Model No. 1220-8. The descriptive literature submitted with its bid included a specifically prepared drawing that lists building measurements of 12' x 20', and included a line drawn to show the height of the building; however, the height measurement was not filled in. The descriptive literature also included an advertising picture which gave the dimensions as 12' x 20'. The descriptive literature also provided that the dimensions for the bidder's "standard size" precast concrete building, which from the drawing provided is lower in height than the model offered as illustrated in the above noted drawing, is 10' x 12' x 7'6". The agency determined that Michigan's bid satisfied all of the salient characteristics and found it responsive.

Smith-Midland protests that Michigan's bid was ambiguous and thus nonresponsive. Specifically, Smith-Midland argues that Michigan's descriptive literature creates an ambiguity concerning the dimensions of the proposed "equal" building offered by Michigan.<sup>1</sup>

The offer of an equal product in a brand name or equal procurement is responsive so long as the descriptive material submitted with the bid, or other information reasonably available to the contracting agency, is sufficient to enable the agency to determine what is being offered and whether it meets the listed salient characteristics. Applied Electro Mechanics, Inc., B-214673, Sept. 10, 1984, 84-2 CPD ¶ 271. Because the adequacy of the descriptive material and the quality of the product it describes are technical evaluations for the contracting agency's judgment, we will defer to the agency's determinations in those respects unless it is clear from the record that the descriptive material is ambiguous or

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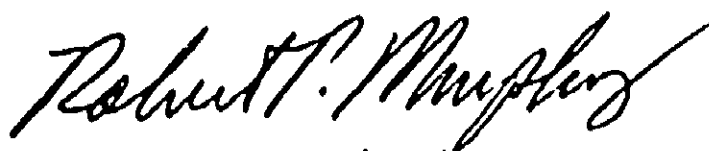
<sup>1</sup>The protester also initially alleged that the agency improperly allowed Michigan to complete certain representations and certifications after the submission of its bid. The agency report explains that Michigan was allowed to cure minor omissions in its representations and certifications, such as dating its Certificate of Procurement Integrity. Smith-Midland did not address these matters in its comments and we consider them to be abandoned. See Reach All, Inc., B-229772, Mar. 15, 1988, 88-1 CPD ¶ 267.

evidences nonconformity with the salient characteristics. Le Prix Elec. Distribs., Ltd., B-212518, Dec. 27, 1983, 84-1 CPD ¶ 26. Such defective literature renders the bid nonresponsive. Emerson Elec. Co., B-212659, Nov. 4, 1983, 83-2 CPD ¶ 529.

Here, the agency reasonably interpreted Michigan's bid and its accompanying descriptive literature as establishing that the firm was offering a precast concrete building with the dimensions of 12' x 20' x 8'. The descriptive literature submitted by Michigan includes a model number which expresses the dimensions of the precast concrete building offered by Michigan. The proposed "equal" building offered by Michigan in this procurement had the model No. 1220-8, which signifies dimensions of 12' x 20' x 8'. Both the advertising picture and the drawing list the dimensions of Michigan's building as 12' x 20'. It is also possible to determine that the height of the building offered is 8 feet from the specially prepared drawing. In particular, the drawing that Michigan submitted with its bid shows that the steel doors on the precast building are 6'8" high, and that the doors start 2" above the foundation. From the drawing proportions, it is clear that the building rises for another 12" above the door, and it contains a 3" piece on the top of the building, immediately below the roof. The sum of these measurements shows a height of 8'1", which meets the solicitation requirements.

The information in Michigan's descriptive literature regarding the dimensions of the "standard size" (10' x 12' x 7'6") precast concrete building was informational in nature and did not qualify Michigan's bid. Because the only reasonable interpretation of Michigan's bid was that it intended to furnish the 12' x 20' x 8' building called for in the solicitation, the agency properly determined that Michigan's bid was responsive.

The protest is denied.

  
for James F. Hinchman  
General Counsel