

# DECISION



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

60023

FILE: B-184734

DATE: October 9, 1975 97853

MATTER OF: Lansmont Corporation

## DIGEST:

Invitation contained brand name or equal clause providing that if bidder proposed furnishing equal product bid must contain sufficient descriptive data to evaluate it or include reference to previously furnished data. Since bidder offered equal product which could not be evaluated from brochure submitted and literature already in possession of agency was not referenced in bid, bid was properly rejected as nonresponsive as agency has no obligation to go to bidder after bid opening or to expend unreasonable efforts to obtain data.

This matter concerns the protest filed by Lansmont Corporation (Lansmont) against the award of a contract to L.A.B. Division, Mechanical Technology, Inc. (LAB), under invitation for bids (IFB) No. 184-E-ARS-75, issued on June 5, 1975, by the United States Department of Agriculture (Agriculture), Agricultural Research Center-West, Beltsville, Maryland, for item No. 1, a compressor tester and item No. 2, an electrohydraulic vibration test system for product and package testing.

The IFB required that bids be submitted on a brand name or equal basis. Included in the IFB was NER Form 19, a brand name or equal clause. It provided in pertinent part that:

- "(c)(1) If the bidder proposes to furnish an 'equal' product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not

responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the requirements of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity."

Item No. 2 of the solicitation called for an electrohydraulic vibration test system for product and package testing, L.A.B. Corporation model No. HV-6-5K, or equal. Lansmont submitted a bid only for item No. 2 based on its model No. 6000-15, as an equal to the brand name specified.

By letter dated July 23, 1975, the contracting officer informed Lansmont that its bid was determined to be nonresponsive because it had failed to furnish any descriptive information with the bid describing the model offered. The contracting officer states that prior to award Lansmont's bid was carefully reviewed. It did not contain any descriptive literature, nor did it refer to any previously furnished. The procuring activity attempted to locate descriptive literature and did find a brochure describing model No. 6000-15. However, it was determined that this material was not sufficiently detailed to permit the procuring activity to determine what was being offered or what the Government would be binding itself to purchase if an award were made to Lansmont.

Lansmont contends that it had furnished sufficient descriptive literature to enable the activity to determine what was being offered. The literature was furnished to a member of the engineering group at Agriculture, the eventual users of the vibration test system. Lansmont asserts that the information, which consisted of a descriptive brochure and its specification MS-69, was provided to the engineering group in Beltsville, Maryland, on April 29, 1975.

The brand name or equal clause of the solicitation, quoted above, provides that if a bidder proposes to furnish an equal product, the bidder must include descriptive data sufficient to permit evaluation of the equal product. Thus, the brand name or equal clause makes it incumbent upon each bidder offering other than the referenced item to provide with its bid sufficient descriptive data to enable the procuring activity to determine that the item offered will meet the needs of the Government as specified. See B-178245, May 31, 1973.

The information provided by the bidder may include catalog references, other pertinent data and/or information concerning a bidder's proposed modifications of an existing product. However, all such information must either (1) be furnished with, or identified in the bid, or (2) be reasonably and readily available to the purchasing activity in the event that such information regarding the specific model offered has been published. See B-176484(1), January 22, 1973.

The member of the engineering group referred to in Lansmont's protest was not directly involved with this procurement and the procuring activity did not know he had been furnished with any relevant information until informed by Lansmont after rejection of its bid. Lansmont states that if it had been contacted by Agriculture, it would have been able to inform the agency where the descriptive literature was. Regarding the procuring activity's obligation to contact a bidder, once the bids have been opened, on questions concerning an item's equivalency to the specifications, our Office held in 50 Comp. Gen. 137, 140 (1970):

"\* \* \* This \* \* \* is not meant to indicate that the procuring activity has any obligation to go to the bidder after opening to obtain descriptive data on an 'or equal' product or to expend other unreasonable efforts to obtain the data. \* \* \*"

Lansmont, in its letter dated September 12, 1975, states that "Vibration testing systems are complex and many options are available, so that our brochure by itself is not a full description of the system which we proposed to furnish." However, it was only this brochure which the contracting officer had in his possession to evaluate the bid. It is clear, therefore, that Lansmont's bid could not be properly evaluated in the absence of sufficient descriptive literature describing the model offered.

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Accordingly, the protest is denied.

*Thomas D. M...*  
Acting Comptroller General  
of the United States