

DECISION



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

FILE: B-214493.2

DATE: October 23, 1984

MATTER OF: Information Design, Inc.

DIGEST:

1. Where the only evidence on an issue is the conflicting statements of the contracting agency and the protester, the protester has not met its burden of affirmatively proving its case.
2. A bid is nonresponsive where descriptive data required to be submitted with it for evaluation purposes fails to show conformance with specifications.

Information Design, Inc. protests the rejection of its bid as nonresponsive under Invitation for Bids (IFB) No. DAAG08-84-B-0105 issued by the Department of the Army, Sacramento Army Depot, Sacramento, California, for portable microfiche viewers. The Army rejected Information Design, Inc.'s bid for failure to furnish product literature which showed its product met the salient characteristics of the solicitation. Information Design, Inc. also protests that the awardee's descriptive literature did not demonstrate compliance with specifications.

The protest is denied in part and dismissed in part.

Amendment 16 to the IFB required the submission of descriptive literature with the bid to show that the product offered conformed to amended specifications. Information Design, Inc. asserts that in response to Amendment 16, it submitted four pictures and several pages of handwriting demonstrating in affirmative statements that the unit it was bidding met the amended specifications. The protester contends that the Army improperly evaluated the descriptive literature it submitted in response to the original solicitation, not the completely different pictures and information subsequently submitted in response to Amendment 16.

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In its report to our Office, the Department of the Army disputes Information Design, Inc.'s version of the facts. According to the Army, it received from the protester in response to Amendment 16 only four pictures and a short handwritten note on the reverse of the sheet containing the pictures. A copy of the note and the photographs are included in the report. The note read: "Data Sheet in process of being printed. Due to the shortness of request photo's enclosed. Unit can be shown upon request." The Army determined that the pictures alone did not show compliance with the specifications. Evaluated collectively, the pictures and the literature submitted in response to the original solicitation failed to yield enough information to confirm compliance with seven of the amended solicitation's thirteen specifications.

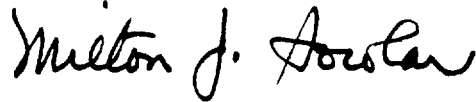
The only available evidence as to whether Information Design, Inc.'s response to Amendment 16 included several pages of handwriting demonstrating that its unit met amended specifications is the conflicting statements of the protester and the contracting agency. In such circumstances, we have held that the protester has not met its burden of affirmatively proving its case. See Georgetown Air And Hydro Systems, B-210806, Feb. 14, 1984, 84-1 CPD ¶ 186. In view of Information Design Inc.'s failure to meet its burden of proof on the issue, we must conclude that all the Army received from Information Design, Inc. to describe its product in response to Amendment 16 was four pictures and a short handwritten note on the reverse of the sheet containing the pictures.

We therefore must conclude that the Army acted properly in rejecting Information Design, Inc.'s bid as nonresponsive for its failure to provide adequate descriptive literature. When an agency requires bidders to provide descriptive literature for use in bid evaluation, rejection is required when the literature does not clearly show conformance with the specifications, even if the offered product in fact possesses the required characteristics. See Gulf & Western Healthcare, Inc., B-209684; B-210466, Aug. 25, 1983, 83-2 CPD ¶ 248.

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Information Design, Inc. also objects to the Army's award of the contract to Bell & Howell Company, because the company's descriptive brochure lacked enough information to demonstrate compliance with all specifications. We dismiss this protest issue. Section 21.1(a) of our Bid Protest Procedures, 4 C.F.R. Part 21 (1984), requires that a party be "interested" in order to have its protest considered on the merits. Generally, a firm that could not receive the contract award even if its protest had merit does not meet that requirement. See, e.g., Betakut USA, Inc., B-212586, Jan. 26, 1984, 84-1 CPD ¶ 120. In this connection, the record indicates that at least one other responsive bid was received, so that the protester could not receive the award if it were correct on this issue. As the Army could not accept Information Design, Inc.'s nonresponsive bid, as discussed above, the firm is not an interested party under section 21.1(a) to protest the propriety of the award to Bell & Howell Company.

The protest is denied in part and dismissed in part.



Acting Comptroller General
of the United States