

DECISION

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

60524

FILE: B-185332

DATE: February 11, 1976

MATTER OF: Engineering Design & Development

98622

DIGEST:

1. Where bidder takes exception in bid to certain portions of quality program required under IFB, such action renders bid nonresponsive and not subject to correction as error of minor nature under ASPR § 2-406.3 because nonresponsive bid may not be corrected to make it responsive. Further, fact that agency waived requirement on prior procurement does not affect instant rejection as responsiveness must be determined from bid itself.
2. While acceptance of nonresponsive bid would result in monetary savings, such bid may not be accepted as maintenance of principles of competitive procurement system is of paramount importance.

The Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania, issued invitation for bids (IFB) No. N00104-75-B-0960 on September 19, 1975, for the procurement of 168 wiring harnesses for the Sidewinder 9G missile.

Bids were opened on October 20, 1975, and the low bid of \$114,912 was submitted by Engineering Design & Development (EDD). Upon review of EDD's bid, the contracting officer noted that the bidder had taken exception to certain portions of Quality Program MIL-Q-9858A and, therefore, the contracting officer determined to reject the bid as nonresponsive.

EDD has protested this rejection contending that it made an error in its bid which should be corrected under § 2-406.3 of the Armed Services Procurement Regulation (ASPR) (1975 ed.) because the deviation was minor in nature. Further, EDD argues that the portions of MIL-Q-9858A to which it took exception were waived on a prior procurement for the same item and since that procurement EDD has now complied with the requirements of the quality program but neglected to reflect this fact in its bid. Also, EDD states that acceptance of its bid will result in savings to the Government

B-185332

and faster delivery and, therefore, rejection of its bid would not be in the Government's best interest.

Regarding EDD's first contention that its bid should be corrected under ASPR § 2-406.3, in order for an error in bid to be corrected under the regulation, we have held that the bid must be responsive to the invitation as submitted. In this regard, we have held test requirements or a reliability program incorporated in an invitation to be a material requirement and an exception in a bid to such a requirement renders the bid nonresponsive. 43 Comp. Gen. 813 (1964). Therefore, if EDD was permitted to delete the objectionable portion from its bid, it would be tantamount to allowing EDD to submit a new bid. 38 Comp. Gen. 819 (1959).

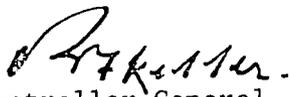
The Navy agrees with the contention of EDD that MIL-Q-9858A was waived on a prior procurement. However, the Navy states that during performance of that contract, it maintained close surveillance of the production and, therefore, allowed compliance with MIL-I-45208 rather than MIL-Q-9858A, a less stringent quality program. EDD disputes that surveillance was conducted by the Navy.

We do not find it necessary to resolve this disagreement as to what occurred on the prior contract. The determining factor is what was required under the instant IFB. As the IFB required compliance with MIL-Q-9858A and EDD's bid took exception to certain portions of the requirement, the bid was nonresponsive to the IFB. Past actions of the procuring activity do not affect the responsiveness of the bid, which must be determined from the bid itself.

Finally, EDD argues that rejection of its bid would not be in the best interest of the Government because of the monetary savings and faster delivery the Government would receive by acceptance of its bid. It has been our Office's consistent position that strict maintenance of the established principles of competitive procurement by the Government is infinitely more in the public interest than for the Government to obtain a pecuniary advantage in a particular case by violation of the rules. B-175420, May 22, 1972, and Environmental Tectonics Corporation, B-183616, October 31, 1975, 75-2 CPD 266.

B-185332

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States