

J. H. Roberts, PL-2

DECISION



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

2029

FILE: B-192456

DATE: October 12, 1978

MATTER OF: BASF Systems, Inc.

DIGEST:

1. Bidder's failure to submit required list of errors along with sample disk pack or to indicate in bid that sample was tested for errors and contained none where Government was not in position to test disk pack for location of errors is cause for rejection as nonresponsive. Documentation is necessary to enable procuring activity to use item and to evaluate bid to determine whether item conforms with Government's stated technical requirements.
2. Bidder relies on oral advice regarding terms of solicitation at its own risk.

The Division of Data Processing of the U. S. Department of the Treasury's Bureau of Government Financial Operations (Treasury) issued an Invitation for Bids (IFB) No. BGFO-79-15 for the procurement of a quantity of disk packs capable of operation on both IBM and Honeywell brand disk drives.

The IFB, as amended, required bidders to submit, as part of their bids, one disk pack as a bid sample to be evaluated to determine compliance with all technical requirements. Additionally, the following portion of the IFB required submission of data with the bid:

"Each [disk] pack (including the sample) must be provided with an error listing for that pack locating both correctable and uncorrectable errors * * *." (Emphasis added.)

Insofar as is relevant to this decision, BASF Systems, Inc. (BASF) submitted a bid which included the required sample disk pack, but lacked the error listing. Treasury therefore declared the bid non-responsive, and rejected it, actions from which BASF now protests to this Office.

The requirement for an error listing is necessary to determine whether the item complies with the following IFB specification:

"As a minimum, each pack must meet the following criteria:

- 1) no errors in home address area, on cylinders 000-004, and on surface 1A of track 406
- 2) / 6 errors/surface, / 35 error pack, / 15 uncorrectable errors/pack, / one correctable error/track."

Moreover, the error listing is an essential part of Treasury's description of the end item because it would give Treasury the exact location of errors on the disk pack and would permit it to avoid using those areas. Treasury has advised us that it lacked the in-house capability to produce error listings as part of its testing of the sample or to test for compliance with the above cited criteria. Thus the solicitation required bidders to test for and list errors. Consequently, BASF's failure to submit error listing data essential to the evaluation of its bid or to provide evidence that its sample was tested for errors and contained none was considered a material defect in its bid.

The protester maintains that the requirement for an error listing was inapplicable to its disk packs because it contends they are error-free and that it made this fact known to Treasury in a phone conversation prior to bid opening. It alleges that Treasury's response was "not to worry now but to wait and see how the actual testing turned out." Relying upon this alleged oral advice, BASF submitted no written error listing or statement of error freedom to supplement its bid.

Paragraph 3 of the IFB's "Instructions and Conditions" specifically states that oral explanations given before award of a contract are not binding. Assuming arguendo that BASF received erroneous oral advice, an allegation which Treasury categorically denies, BASF relied upon it at its own risk and it must, therefore, suffer the consequences of such reliance. A. L. Leftheriotis, Ltd., B-190720, March 30, 1978, 78-1 CPD 251; see Deere & Company, B-189136(1), June 28, 1977, 77-1 CPD 460, and decisions cited therein.

We are satisfied that the purpose of the IFB's requirement for the submission of an error listing with the bid sample was essential to the use of the disk pack and would provide Treasury necessary information regarding the suitability of the disk pack to be procured. Although the protester alleges that its disk pack is error-free, it has not offered to produce documentary evidence of that fact such as a printout showing that the sample disk pack was tested for errors but contained none. The agency did not have the capability to test for errors and the failure of the protester to comply with this requirement adversely affected the ability of the procuring activity to use the disk pack and evaluate the acceptability of the BASF bid. In Dumont Oscilloscope Laboratories, Inc., B-190528, March 6, 1978, 78-1 CPD 172 we found no objection to an agency's rejection of a bid as nonresponsive where the protester's bid sample failed to include required acceptance test procedures, without which agency testing of the bid sample and evaluation of the bid could not be accomplished. In the instant case the failure to satisfy an essential requirement rendered BASF nonresponsive which justified Treasury's rejection of the BASF bid.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States