

**DECISION**

25451<sup>u</sup>  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-210500.2**DATE:** June 13, 1983**MATTER OF:** International Waste Industries**DIGEST:**

1. Bid is nonresponsive where invitation required the successful bidder to supply and supervise the installation of an incinerator, and the bid contains a notation that the price includes 5 days of installation supervision. To be responsive, a bid must represent an unequivocal offer to meet the invitation's material requirements at the bid price, but this bid conditions its price upon no more than 5 days of supervision, and limits the Government's right to require supervision of the incinerator's installation until completed.
2. Bidder relied at its own risk on alleged oral advice by contracting personnel that the firm could qualify its bid price, where the invitation incorporated standard language that oral explanations or instructions are not binding. Moreover, erroneous advice cannot estop the contracting agency from rejecting a nonresponsive bid since it is required to do so by law.
3. Bid responsiveness must be determined from the material available at bid opening, and post-opening explanations therefore cannot be considered to correct a nonresponsive bid, even if a lower price could be obtained by accepting the corrected bid.

International Waste Industries protests the Veterans Administration's rejection of its bid under invitation for bids No. 671-13-83. The invitation required the successful bidder to supply, and supervise the installation of, an incinerator in the Audie L. Murphy Memorial Veterans Hospital, San Antonio, Texas. The Veterans Administration determined the bid was nonresponsive because the bid included a notation that, in the agency's view, qualified

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the bidder's obligation to supervise the incinerator's installation. We agree with the Veterans Administration, and we therefore deny the protest.

The invitation provided that installation would be performed by others but required that the contractor supervise the installation of the equipment and all utility connections within 10 feet of the incinerator. International Waste Industries' bid stated: "NOTE: 5 days of installation supervision is included in the above price."

According to International Waste Industries' protest submission, the reason for the notation was the firm's estimation that the installation would entail 10 man-days of rigging, plumbing, and wiring work. This was based on the assumption that the rigging would require 2 days, after which two teams of two men could accomplish the plumbing and wiring in an additional 2 days, for a total of 10-man days. Since all this work presumably would be accomplished in a 4-day period, the protester determined that the project should involve only 4 man-days of supervision.

The invitation did not specify what size or type of work crew would install the incinerator, and, depending on the size of the crew used and the speed with which it worked, it is obvious that the installation could take more than 5 days. The Veterans Administration therefore considered the notation as a qualification of the bidder's obligation to supervise the incinerator's installation. The agency therefore rejected the bid as nonresponsive because the bid did not offer a firm fixed price to meet the Government's needs.

We believe the Veterans Administration correctly construed the notation as limiting the bidder's obligation to provide supervision and properly determined the bid to be nonresponsive.

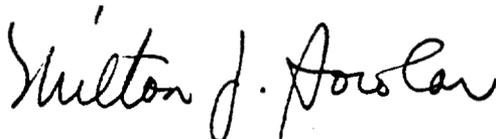
To be responsive, a bid must unequivocally offer to meet the invitation's material terms at the bid price. J. Baranello and Sons, 58 Comp. Gen 509, 514 (1979), 79-1 CPD 322. Material terms of an invitation are those terms that have more than a trivial effect on price, quality, quantity or delivery. See Action Manufacturing Company, B-208205.2, December 13, 1982, 82-2 CPD 526. A bid that limits the firm's contractual obligation, if the firm is awarded the contract at the bid price, to other than the obligation reflected in the invitation's material terms, thus generally must be rejected. See Medi-Car of Alachua County, B-205634, May 7, 1982, 82-1 CPD 439.

The notation in the bid clearly appears to limit International Waste Industries' obligation at its bid price to providing no more than 5 days of supervision. Therefore, the bid does not offer unequivocally to meet the invitation's terms at the bid price. The bid both fails to offer a firm fixed price for supervision through complete installation, and limits the Government's right to require supervision of such installation. The Veterans Administration therefore properly rejected the bid.

The protester alleges that it included the notation about the number of installation supervision days reflected in the bid price based on the oral advice of someone at the contracting activity. While the Veterans Administration denies having so advised the protester, the allegation, if proven, would not affect the result here. The invitation incorporated Standard Form 33-A which clearly states that oral explanations or instructions given before award will not be binding, and that any explanations desired regarding the meaning of the solicitation must be requested in writing. The bidder therefore relied on any oral explanation at its own risk. Trident Industrial Products, Inc., 59 Comp. Gen. 742 (1980), 80-2 CPD 222. Moreover, erroneous advice given by agency officials cannot estop the agency from rejecting a nonresponsive bid, since the agency is required to do so by law. Id.

Finally, the protester points out that after bid opening it sent the agency a mailgram deleting the notation in issue. The responsiveness of a bid, however, must be determined from the material available at bid opening, and post-opening explanations therefore cannot be considered to correct a nonresponsive bid, even if a lower price could be obtained by accepting the corrected bid. Sunsav, Inc., B-205004.2, November 29, 1982, 82-2 CPD 476.

The protest is denied.

for   
Comptroller General  
of the United States