

DECISION

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

26345

FILE: B-210730**DATE:** September 27, 1983**MATTER OF:** MVI Precision Machining, Ltd.**DIGEST:**

Where IFB identifies previously approved source controlled components and requires bidder to certify that it will furnish only those components, bidder's failure to certify requires rejection of bid as nonresponsive. Absent such certification, bidder could, in accordance with the notes on the source control drawings, offer alternative components for the procuring agency's approval rather than those previously approved and identified in the IFB, thereby varying its obligation from that intended by the agency.

MVI Precision Machining, Ltd., protests the rejection of its bid as nonresponsive to the source control certification requirement of IFB No. DAA09-83-B-0018 issued by the U.S. Army Armament Command, Rock Island, Illinois, to procure manifold assemblies for M198 howitzers. We agree that MVI's failure to certify that it would provide parts from the vendors listed on the source control drawings rendered its bid nonresponsive and we deny the protest accordingly.

The IFB specifications included source control drawings for five components, each drawing bearing the following notation:

"ONLY THE ITEM DESCRIBED ON THIS DRAWING WHEN PROCURED FROM THE VENDOR(S) LISTED HEREON IS APPROVED BY ROCK ISLAND ARSENAL, ROCK ISLAND, ILL., 61201, FOR USE IN THE APPLICATION(S) SPECIFIED HEREON. A SUBSTITUTE ITEM SHALL NOT BE USED WITHOUT PRIOR APPROVAL BY ROCK ISLAND ARSENAL."

In addition, as a warning on its face page emphasized, the solicitation contained a separate certification clause for source controlled items which provided:

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**"K.8 CERTIFICATION OF SOURCE CONTROLLED
ITEM OR COMPONENTS**

This solicitation contains a requirement for bidders/offerors to supply an item or component(s) that is (are) identified as source controlled. The bidder/offeror represents and certifies as part of his bid/offer that: (check box)

[] The item/component(s) being offered will be obtained from only the approved source(s) identified on the source control drawing(s).

CAUTION: If this is a formally advertised procurement, failure to complete this certification will render the bid nonresponsive."

Fourteen firms responded to the solicitation. Because MVI's bid was low, the contracting officer requested and received a preaward survey of MVI before discovering that the firm had failed to check the box in clause K.8, quoted above. The contracting officer then concluded that MVI's bid was nonresponsive, as were the next four low bids for the same reason. He then determined that all of the remaining bids were unreasonable as to price and canceled the solicitation.

The Army explains that the certification is needed to alert bidders to the fact that only certain approved components will fulfill the Government's requirements and to enable the Government to ascertain that the sources of the components which the bidder is offering have been approved at the time of bid opening. Otherwise, the Army argues, bidders would be able to propose the use of substitute items after bid opening, since the legend on the source control drawings simply states that alternates shall not be used without the agency's approval. According to the Army, its experience with the drawing legend has been unsatisfactory because, despite the requirement for prior approval of substitutes, contractors nevertheless manufacture and submit products which have not been approved, resulting in lengthy delays and additional costs. The Army states that the certification clause was fashioned to avoid these problems.

We first note that MVI did not object to the use of the certification clause prior to bid opening and that even now its arguments do not directly challenge the appropriateness of the Army's attempt to restrict consideration of

source controlled components to those approved prior to the bid opening, thereby effectively deleting that part of the drawing legend which, with the Army's prior approval, permits the contractor to substitute other items for the designated source controlled items during performance. Any such argument attacking the certification clause itself would, of course, have been untimely after bid opening, when this protest was filed. 4 C.F.R. § 21.2(a)(1983). Instead, MVI contends that the certification clause has not achieved the Army's intended purpose because it fails to vary the obligation imposed upon the bidder by the drawing legend.

In considering a protest involving an earlier version of the source control clause which required that the bidder indicate its source of supply by inserting the name of its intended suppliers, we held that the bidder's failure to name its intended source of supply frustrated the purpose of the clause. In our opinion, the bidder was not otherwise obligated to furnish the product of a source that had been approved by the time bids were opened and that, consequently, a bid that failed to comply with the clause was not responsive. Bado Engineering, B-203202.2, October 6, 1981, 81-2 CPD 282; see also J.M.T. Machine Company, B-199650, November 19, 1980, 80-2 CPD 382.

MVI argues that these prior cases are inapposite because under the previous clause the bidder actually was to list its intended source of supply, which is not possible with the present certification. MVI argues that, consequently, when it submitted its bid without qualification, it bound itself to comply with the legend on the source control drawings and that merely checking the certification clause in no way varies that obligation.

We do not agree. The bidder's failure to certify does affect its obligation to perform in accordance with the IFB because, absent such certification, the notes on the source control drawings do not limit the bidder to sources approved prior to bid opening. J.M.T. Machine Co., supra. However, under the certification, the bidder is obligated to furnish only items from approved sources "identified on the source control drawing(s)," that is, from approved sources listed on the drawings at the time bids are opened. Consequently, because the certification clause imposes a different obligation than that set forth on the individual source control drawings, MVI's failure to certify rendered its bid nonresponsive.

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The protest is denied.

for *Milton J. Rowland*
Comptroller General
of the United States