

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548**FILE:** B-214031**DATE:** June 18, 1984**MATTER OF:** Duro-Life Corporation**DIGEST:**

1. Procuring activity's rejection of protester's bid conditioned on the use of government property already in its possession under another contract was proper where protester failed to submit with bid written authorization to use such property and other data as required by the solicitation.
2. A bid that is properly declared nonresponsive due to bidder's failure to submit required written authorization for use of government property in bidder's possession under another contract may not be made responsive through bidder's post-bid opening explanation.

Duro-Life Corporation (Duro-Life) protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. DAAA09-83-B-4841, issued by the Army Armament and Munitions Chemical Command (Army) for pin assemblies.

We deny the protest.

The Army states that Duro-Life's bid was rejected because the firm predicated its bid on the use of government property already in its possession under another contract, but failed to submit written authorization for such use and a list of the government property to be used on a rent-free basis as required by the IFB. The Army points out that the IFB warned bidders that bids conditioned on the use of government property without the required data would be rejected as nonresponsive. Award was made to the Lewis & Clark Company, Inc., the next low bidder.

Duro-Life states that it mistakenly checked the box on the IFB indicating that the firm would use government property in contract performance and that, at the request of procuring officials, it provided written verification of the mistake. Duro-Life maintains that the error does not affect

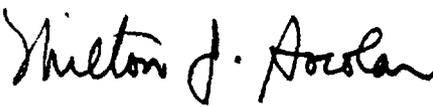
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the terms of its bid as submitted and, therefore, award should be made to that firm.

Duro-Life's bid on its face is conditioned on the use of government property in that firm's possession. This Office consistently has held that where a bid is predicated on the use of government property in the bidder's possession, the failure of the bidder to submit the required written authorization for such use with its bid renders the bid nonresponsive since the use of government property in contract performance may materially affect contract price. James R. Parks Co., B-186699, October 22, 1976, 76-2 CPD 360; B-155943, April 30, 1965. Here, for instance, since the IFB contained a separate price evaluation scheme for bids conditioned on the rent-free use of government property in a bidder's possession, the failure of a bidder to indicate whether the government property offered is on a rent-free or rental basis and establish that it is actually authorized to use that property makes it impossible to determine contract price. Thus, Duro-Life's failure to provide this information may not be waived as a mere informality and the Army's rejection of Duro-Life's bid on this basis was proper. James R. Parks Co., supra.

Furthermore, Duro-Life's post-bid-opening statement that it mistakenly checked the box indicating that its bid is predicated on the use of government property in its possession cannot be considered in determining the responsiveness of the firm's bid. The responsiveness of Duro-Life's bid must be determined from the bid itself and it is not proper to consider the reasons for the nonresponsiveness, whether due to mistake or otherwise. Cardox, Division of Chemetron Corporation, B-199419, July 21, 1980, 80-2 CPD 54; B.K. Instruments, Inc., B-212162, November 30, 1983, 83-2 CPD 27. To have allowed Duro-Life by its post-bid-opening explanation to make its nonresponsive bid responsive would be tantamount to permitting the submission of a new bid and compromise the integrity of the competitive bidding system. Cardox, Division of Chemetron Corporation, supra. In this regard, the mistake-in-bid correction procedures may not be used to correct a nonresponsive bid.

Protest denied.


for Comptroller General
of the United States