

**DECISION**

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

**FILE:** B-220034 **DATE:** November 13, 1985  
**MATTER OF:** Alliance Machine Company

**DIGEST:**

1. Bid must be rejected as nonresponsive when cover letter accompanying bid includes standard commercial term disclaiming liability for consequential damages, since it deviates materially from the solicitation.
2. A nonresponsive bid may not be corrected through mistake-in-bid procedures.
3. A nonresponsive bid may not be accepted even though it would result in monetary savings to the government since acceptance would be contrary to the maintenance of the integrity of the competitive bidding system.

Alliance Machine Company (Alliance) protests the Department of the Navy's rejection of its bid as nonresponsive under invitation for bids (IFB) No. N62472-85-B-1450, the second step of a two-step sealed bid procurement of overhead cranes for the Naval Submarine Base, Kings Bay, Georgia. The Navy rejected Alliance's bid as nonresponsive because its cover letter limited the remedies available to the government under several IFB provisions. Alliance argues that it inadvertently included its commercial terms in its cover letter, that the terms did not limit the government's rights and that it should have been permitted to correct the mistake in its bid.

We deny the protest.

Alliance included the following statement in a cover letter submitted with its bid:

"Our quotation is contingent upon the following clarification/exception:

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In no event under any circumstances or conditions will The Alliance Machine Company be responsible for any claims arising from special, indirect or consequential damages for any losses resulting from the failure of the equipment, or noncompliance with any law, acts, codes, or ordinances, nor contingent liability due to delays except as provided by the terms of Liquidated Damages, Page 20, Item F4."

Alliance alleges that this language is normally used in bids to commercial enterprises and was inadvertently included in its bid. Alliance argues that its negation of special, indirect or consequential damages does not limit the rights of the government because the government could not legally assert such damages. According to Alliance, even if the cover letter language were included in a contract, the government would have all the rights it would have had absent the language.

The Navy argues that the language was specifically prepared for this IFB, since it cites the Liquidated Damages clause and the page of the IFB involved. Regarding Alliance's contention that the government retained the rights it would have had absent the cover letter language, the Navy contends that the language qualifies the IFB's Limitation of Liability High Value Items clause and the Default clause.

Alliance responds that the Limitation of Liability High Value Items clause is not incorporated in the solicitation. Further, Alliance argues that the rights of the government, as provided for under the Default clause, are fully intact since the Liquidated Damages provision specifies that the government may terminate the contract if the company fails to deliver supplies within the specified time.

We find that Alliance's statement limiting its liability for claims arising from consequential damages provides sufficient cause for the Army to reject its bid as nonresponsive. It is a basic principle of federal procurement law that, to be considered for award, a bid must comply in all material respects with the IFB so that all bidders will stand on an equal footing and that the integrity of the competitive bidding system will be maintained. Fluke Trendar Corp., B-196071, Mar. 13, 1980, 80-1 C.P.D. ¶ 196.

Bids containing standard commercial terms and conditions which deviate from material solicitation requirements must be rejected as nonresponsive. Avantek, Inc., B-219622, Aug. 8, 1985, 85-2 C.P.D. ¶ 150; Williamsburg Steel Products Co., B-185097, Jan. 23, 1976, 76-1 C.P.D. ¶ 40. Further, we have recognized that a bid condition which qualifies a bidder's liability for special or consequential damages materially affects the substance of the bid and renders it nonresponsive. B-175097, May 12, 1972; B-146207, June 30, 1961. Although Alliance contends otherwise, we note that it is well settled, that the government can recover consequential damages under a claim for breach of the warranty clause contained in the contract. See U.S. v. Franklin Steel Products, Inc., 482 F. 2d. 400 (9th Cir. 1973) cert. denied, 415 U.S. 918 (1974). Since Alliance's bid is nonresponsive at least in this respect, it is not necessary to decide whether the bid is nonresponsive to other provisions.

Alliance's contention that a mistake contributed to the nonresponsiveness of its bid affords no basis for relief because the mistake-in-bid procedures are not available to cure a nonresponsive bid. Avantek, Inc., B-219622, supra. A bid that is nonresponsive may not be corrected after bid opening, since the nonresponsive bidder would receive the competitive advantage of electing to accept or reject the contract after bids were exposed by choosing whether to make its bid responsive. Central States Bridge Co., Inc., B-219559, Aug. 9, 1985, 85-2 C.P.D. ¶ 154.

Alliance states that rejecting its bid will cost the government approximately 1.3 million dollars. Although rejection of Alliance's bid may result in additional cost to the government on this procurement, in order to maintain the integrity of the competitive bidding system, a nonresponsive bid may not be accepted even though the government could save money by accepting it. Central States Bridge Co., Inc., B-219559, supra.

The protest is denied.

*for Seymour Efron*  
Harry R. Van Cleve  
General Counsel