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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of:           Becton-Dickinson  
File:                 B-224500  
Date:                October 2, 1986

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## DIGEST

A bid which failed to include required bid samples was properly rejected by the contracting agency as nonresponsive where the IFB clearly required that samples be submitted by the time set for bid opening for the purpose of evaluating the sample's conformance with the solicitation's requirements.

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## DECISION

Becton-Dickinson (B-D) protests the rejection of its bid as nonresponsive on item Nos. 1-4, 6-8, and 15-17 under invitation for bids (IFB) No. M1-105-86 issued by the Veterans Administration (VA) for the procurement of hypodermic needles. The solicitation was conducted under the VA-Department of Defense shared procurement program for supply of the VA, the Defense Personnel Support Center (DPSC) and the Public Health Service. B-D's bid on these items was rejected because B-D did not submit the bid samples required by the IFB for these items.

We deny the protest.

Bid opening was July 8, 1986, and B-D contends that it complied with the IFB's sample requirement by shipping its samples by regular mail on June 25. In addition, B-D notes it has been an acceptable long-term supplier of the items, that it is a current supplier to the VA and that additional samples were sent by commercial carrier after the VA advised the firm after bid opening that no samples had been received. B-D states that it is the low bidder on these items by \$119,000 and that it is in the VA's best interest to award the contract to B-D.

A bid is responsive if it unequivocally offers to perform without exception the exact thing called for in the solicitation so that upon acceptance the contractor will be bound to perform in accordance with all of the invitation's material

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terms and conditions. Edw. Kocharian Co., Inc., 58 Comp. Gen. 214 (1979), 79-1 CPD ¶ 20. Where the solicitation states that a sample must be submitted by the time for bid opening for the purpose of evaluating the sample item's compliance with the solicitation's material terms and conditions, the failure to timely submit the sample is a material deviation from the solicitation's requirements which renders the bid nonresponsive. Asgard Technology, Inc., B-216146, supra; Townhouse Carpets and Interiors, B-215928, Aug. 20, 1984, 84-2 CPD ¶ 202.

Here, the IFB clearly required that bid samples for these items be furnished as part of the bid and be received before the time set for opening of bids. The stated purpose for requiring the samples was to determine the offered items' compliance with required characteristics that could not be described precisely in the IFB; for example, the IFB required that the needles be "rigid enough to avoid bending when inserted into [a] vial." Further, the IFB clearly warned bidders that failure to furnish the required samples on time would require rejection of the bid. Although B-D states that it mailed the samples to the VA, the VA indicates that they were never received and B-D has presented no evidence which contradicts the VA's position. Accordingly, since B-D did not submit the required samples, the agency properly determined that its bid was nonresponsive. Loral Packaging, Inc., B-221341 Apr. 8, 1986, 86-1 CPD ¶ 347.

Furthermore, the fact that B-D is a current and successful supplier of these items does not provide a basis for acceptance of B-D's current bid. Consolidated Technologies, Inc., B-215723, Dec. 7, 1984, 84-2 CPD ¶ 639. Similarly, the samples submitted by B-D after bid opening may not be considered since that would be tantamount to permitting B-D to submit a new bid. Loral Packaging, Inc., supra.

With respect to B-D's contention that award to another bidder will result in the government paying more for these items, we note that the potential monetary savings to the government by accepting an otherwise unacceptable bid is outweighed by the importance of maintaining the integrity of the competitive procurement system. Westinghouse Electric Corporation, B-216976, Aug. 13, 1985, 85-2 CPD ¶ 162.

Finally, we note that B-D has complained that DPSC, unlike the VA, does not require the submission of bid samples and argues that problems of this type would be minimized if both agencies requirements were the same. To the extent B-D is

challenging the use of the bid sample requirement by the VA,  
the allegation is untimely since any protest of its use by  
the VA should have been filed prior to bid opening.  
4 C.F.R. § 21.2(a)(1) (1986).

The protest is denied.

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