

DECISION

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

31048

FILE:

B-218201.3

DATE: April 22, 1985**MATTER OF:**

DAVSAM International, Inc.

DIGEST:

A contracting agency cannot change a matter of responsibility into one of responsiveness merely by the terms of the solicitation.

DAVSAM International, Inc. protests the rejection of its bid as nonresponsive to invitation for bids (IFB) DAAG60-85-B-0145, issued by the United States Military Academy, West Point, New York on December 7, 1984. The IFB called for food service attendant and related custodial services at the cadet mess at West Point. Bid opening was February 8, 1985. We dismiss the protest.

DAVSAM contends that its bid was responsive in that it provided all required information under the "Special Contract Requirements, Finance and Technical Ability" section of the IFB. The Army initially rejected the bid because DAVSAM had not included certain information. However, after filing of the protest, the Army advised DAVSAM by letter of March 11, 1985 that it might forward any other or revised information pertinent to the Special Contract Requirements so that the Army could reevaluate DAVSAM's bid.

At the same time the Army informed two other bidders, Aleman Food Service, Inc. and Logistical Support, Inc., that also had protested their rejection for failure to submit the same type of information, that they could supplement their submissions. Aleman and Logistical Support withdrew their protests once the Army took this corrective action.^{1/}

The Special Contract Requirements, Finance and Technical Ability section of the IFB required bidders to submit--with their bids--information on their previous experience, resumes of supervisory personnel, the role of the project manager, and management plans and procedures.

^{1/}See GAO files Nos. B-218201 and B-218201.2, closed without action on March 22, 1985.

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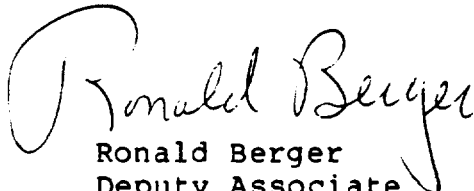
The IFB stated that failure to provide the information would result in the bid being considered nonresponsive. However, it is clear that this information relates to responsibility, rather than responsiveness.

A contracting agency cannot--merely by the terms of a solicitation--change a matter of responsibility into one of responsiveness. Raymond Engineering, Inc., B-211046, July 12, 1983, 83-2 CPD ¶ 83. Responsibility refers to the bidder's apparent ability and capacity to perform all of the contract requirements; responsiveness concerns whether a bidder has unequivocally offered to provide supplies or services in conformity with the material terms and conditions of the solicitation. See Skyline Credit Corp., B-209193, Mar. 15, 1983, 83-1 CPD ¶ 257.

While the Army's initial rejection of DAVSAM's bid was therefore erroneous, once cognizant of the fact that the information in question related to responsibility and therefore could be submitted after bid opening, the agency properly advised DAVSAM and the other two protesters of their right to supplement or revise the information previously submitted. In effect, the agency withdrew its findings of nonresponsiveness. Therefore, the protest as to the rejection of DAVSAM's bid as nonresponsive has been resolved.

To the extent DAVSAM complains that the information it submitted initially with its bid should have been viewed by the Army as sufficient, that information, and other information DAVSAM may have submitted pursuant to the Army's March 11 letter, will be considered as part of the Army's responsibility determination should DAVSAM otherwise be in line for award. DAVSAM has not protested any finding that it is nonresponsible.

Under the circumstances, we are closing our file.


Ronald Berger
Deputy Associate
General Counsel