

# DECISION



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

FILE: B-222806

DATE: April 21, 1986

MATTER OF: A & Z Engineering Company

## DIGEST:

Bid for manufacturing demolition charges containing request to use different type of alloy than specified was properly rejected as nonresponsive since the request conditioned the protester's bid on approval of deviations from the specifications.

A & Z Engineering Company protests any award under request for quotation (RFQ) No. S-86-542 for demolition charges issued by Martin Marietta Ordnance Systems, Inc. in its capacity as operator of the Milan Army Ammunition Plant, Milan, Tennessee. The protester contends that Martin Marietta improperly rejected its low quotation as nonresponsive. We dismiss the protest.

The protester submitted its quotation under the RFQ together with a letter dated March 14, 1986, stating that the protester "would request" two deviations in the type of aluminum alloy specified in the technical drawings for the items covered by the RFQ. The letter stated in part that the deviations "are necessary for manufacture with our tooling, and have been granted on all our previous contracts for these parts." Quotations were due by March 19. By letter dated March 20, apparently in response to a question raised by Martin Marietta, the protester stated that the requested deviations were not intended to qualify the protester's quotation, but could be approved or disapproved by Martin Marietta as it chose. By letter dated April 3, Martin Marietta notified the protester that its quotation had been found nonresponsive.<sup>1/</sup>

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<sup>1/</sup> Martin Marietta's rejection of the protester's quotation as "nonresponsive" reflects the fact that Martin Marietta treated the RFQ as an invitation for bids and the quotations submitted as sealed bids. Consequently, we will refer to the protester's response to the RFQ as a "bid."

To be responsive, a bid must constitute an offer to comply without exception with those terms of the invitation for bids (IFB) having more than a trivial effect on price, quality, quantity or delivery. See Federal Acquisition Regulation, 48 C.F.R. § 14.301(a) (1984); Mobile Drilling Co., Inc., B-216989, Feb. 14, 1985, 85-1 CPD ¶ 199. Here, the protester, while conceding that it requested deviations from the technical specifications, contends that its request was not intended to qualify its offer to perform in accordance with the specifications.<sup>2/</sup> In our view, the only reasonable interpretation of the protester's cover letter requesting the deviations is that the protester's offer to perform was conditioned on Martin Marietta's approval of the deviations.

A request for a deviation from a material term in an IFB renders a bid nonresponsive if the bid as a whole shows that the request is more than an expression of a wish or desire. See Lavelle Aircraft Co., B-218309, June 12, 1985, 85-1 CPD ¶ 678. As noted above, the protester's cover letter accompanying its bid stated that the deviations in the type of alloy to be used were necessary for manufacture of the items with the protester's tooling. In our view, this statement indicates that without the deviations, the protester could not manufacture the items in conformance with the original specifications, and therefore conditioned the protester's performance on Martin Marietta's approval of the deviations. The protester's March 20 letter, sent after bids were due, which characterizes its request for the deviations as merely precatory in nature, cannot be considered in determining whether the protester's bid was qualified and therefore nonresponsive, since the responsiveness of a bid must be determined only from the material available at bid opening, in this case, the protester's original bid and cover letter. See International Waste Industries, B-210500.2, June 13, 1983, 83-1 CPD ¶ 652. Finally, it is irrelevant whether, as the protester contends, its bid for the same items in prior procurements

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<sup>2/</sup> Although the protester also describes the requested deviations as minor in nature, the protester does not elaborate on this statement.

was accepted by another contractor (like Martin Marietta, operating a government-owned plant), even though the bid contained the same request for deviations. See Wright Tool Co., B-212343, Oct. 12, 1983, 83-2 CPD ¶ 457.

Accordingly, since the protester's bid was qualified by its request for deviations from the type of alloy specified, it was properly rejected as nonresponsive. See National Oil & Supply Co., Inc., B-198321, June 20, 1980, 80-1 CPD ¶ 437.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger".

Ronald Berger  
Deputy Associate  
General Counsel