

**DECISION**

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

**FILE:** B-211000**DATE:** August 2, 1983**MATTER OF:** Elwyn Institutes**DIGEST:**

1. Contracting agency's decision to cancel solicitation when all bidders' bid samples fail to meet requirements of purchase description is upheld because protester's low bid was properly rejected as nonresponsive.
2. Bidder relies on oral advice regarding terms of solicitation at its own risk.
3. Under Bid Protest Procedures, allegations concerning apparent solicitation improprieties--stringency of contracting agency bid sample test and time allowed for the preparation of bids--are untimely and will not be considered because filed after bid opening.

Elwyn Institutes (Elwyn) protests the Defense Electronic Supply Center's (DESC) decision to reject all bids and cancel invitation for bids (IFB) No. DLA900-82-B-4181, for test lead sets.

We dismiss in part and deny in part the protest.

The IFB provided that bid samples are required to be tested or evaluated to determine compliance with all purchase description characteristics listed for such test or evaluation in the IFB, and the failure of the samples to conform to all such characteristics would require rejection of the bid. Furthermore, the purchase description provided that bid samples would be subjected to inspections involving surface examinations, dimensions, electrical rating, pull test and dielectric tests.

DESC canceled the solicitation because none of the four bidders' bid samples met the requirements of the IFB purchase description. Elwyn, the low bidder, contends that DESC's evaluation, which was based on handmade instead of production bid samples, put an unfair burden on the bidders. In Elwyn's opinion, the dimensional deviations

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found in its bid samples are minor and such deviations could have been corrected in production. This is supported allegedly by past DESC practice and oral advice of the official responsible for evaluating bid samples. Elwyn contends that DESC should have provided it the opportunity to review the bid sample test procedures and results before canceling the solicitation to assure the correctness of the test results. Finally, Elwyn argues that this cancellation, a prior cancellation of a procurement for the requirement, and the expected resolicitation create an improper auction.

Where a solicitation lists definitive specifications and requires that bid samples strictly comply with those specifications, a sample that does not so comply renders a bid nonresponsive. Cherokee Leathergoods, Inc., B-205960, August 13, 1982, 82-2 CPD 129. The failure of a bid with bid samples to meet salient characteristics is, therefore, a proper ground for bid rejection and it is improper for an agency to waive such a requirement. Casecraft, Inc., B-201065, July 20, 1981, 81-2 CPD 51. Furthermore, we have rejected arguments that alleged minor deviations from bid sample requirements can be waived for correction in production. See Cathey Enterprises, Inc., B-194334, June 13, 1979, 79-1 CPD 418; Airways Industries, Inc., et al., B-190093, August 14, 1978, 78-2 CPD 115.

Elwyn's reliance on erroneous advice from a technical evaluating official (advice not provided by the contracting officer and denied by DESC) and past DESC practice (Elwyn gives no specifics) is irrelevant. BASF System, Inc., B-192456, October 12, 1978, 78-2 CPD 275; Norris Paint & Varnish Co., Inc., B-206079, May 5, 1982, 82-1 CPD 425.

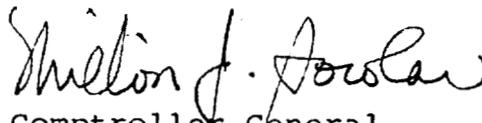
Because of the above and Elwyn's concession that it has no basis to challenge the test results, the bid was properly rejected as nonresponsive. Elwyn's concession is conditioned on the fact that it was denied the opportunity to review the test procedures and results with Government technicians performing the test, which Elwyn views as subjective because of alleged differing measurement techniques. The agency responds that such a review would be improper in the context of formal advertising.

In any event, even conflicting test results have not provided a basis to nullify agency tests absent a showing that the Government's test was defective or improperly conducted, or that the results were erroneously reported. Cathey Enterprises, Inc., *supra*. None of these circumstances has been shown here by Elwyn. Therefore, we agree

with the agency that cancellation was proper. Consequently, Elwyn's contentions regarding improper auction are of no merit. See Crown Laundry and Cleaners; Tri States Service Company--Reconsideration, B-196118.2, B-196118.3, April 2, 1980, 80-1 CPD 245.

Elwyn also contends the IFB allowed only 30 working days to design, build, and test bid samples, and that after it mailed the samples, DESC extended the bid preparation period. Elwyn believes this was unfair. Our Bid Protest Procedures require that protests based upon alleged apparent improprieties in a solicitation be filed prior to bid opening to be timely. 4 C.F.R. § 21.2(b)(1) (1983). While we find nothing patently improper with a 30-working-day bid preparation period (see Defense Acquisition Regulation § 2-202.1 (Defense Acquisition Circular No. 76-25, October 31, 1980)), this contention should have been filed before bid opening. The same reasoning applies to the Elwyn argument concerning the stringency of DESC's bid sample test. Since Elwyn filed these allegations after bid opening, these grounds of protest are untimely.

Accordingly, the protest is dismissed in part and denied in part.

for   
Comptroller General  
of the United States