

DECISION



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

12074 Mr. Fitzmaurice PL-1

FILE: B-196719

DATE: November 20, 1979

MATTER OF: R.M. Thomas Co.

[Protest of Bid Rejection as Nonresponsive]

DIGEST:

1. Rejection of bid which takes exception to IFB is proper and GAO will render decision without obtaining report from agency since protester's initial submission indicates protest is without legal merit.
2. Protest against IFB provision that is filed after bid opening is untimely under GAO Bid Protest Procedures and is not for consideration on merits.

The R.M. Thomas Co. (Thomas) protests the rejection of its bid under invitation for bids (IFB) 605-25-80 issued by the Jerry L. Pettis Memorial Veterans Hospital (VA), Loma Linda, California.

The IFB solicited bids for the regeneration of portable deionized water tanks located at the above-mentioned VA hospital. In its initial submission to our Office, the protester admits that it took exception to the water quality requirements set out under the IFB specification entitled "REGENERATION." A photocopy of the Thomas bid reveals that Thomas changed this requirement by lining out three printed numbers and writing in three different numbers; it also lined out one word and inserted another. Under a second specification, Thomas again lined out a printed number and replaced it with a completely different one. Thomas explains these changes by claiming that the VA requirement was too restrictive and not consistent with another part of the IFB.

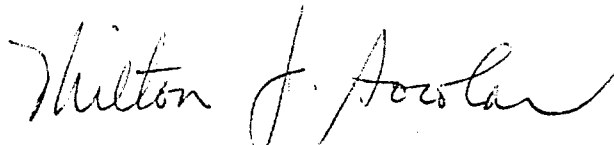
The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation and whether, upon acceptance, it will bind the contractor to perform in accordance with all the terms and conditions thereof. 49 Comp. Gen. 553, 556 (1970).

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Here, the Thomas bid is clearly nonresponsive since it takes specific exception to the terms of the IFB. We have held that when a protester's initial submission shows that its protest is without legal merit, we will decide the matter on the basis of the initial submission without requesting a report from the contracting agency pursuant to our Bid Protest Procedures, 4 C.F.R. part 20 (1979). O.D.N. Productions, Inc., B-194312, April 13, 1979, 79-1 CPP 267. Therefore, we find that VA's rejection of the Thomas bid was proper under the circumstances.

To the extent that the protester is objecting to the IFB's water quality requirements, the protest must be regarded as untimely since, under our Bid Protest Procedures, protests based upon alleged improprieties in a solicitation which are apparent prior to the date set for bid opening must be filed prior to such date. See 4 C.F.R. § 20.2(b)(1) (1979). Therefore, this aspect of the protest is not for consideration on the merits.

The protest is summarily denied in part and dismissed in part.



For The Comptroller General
of the United States