

DOCUMENT RESUME

030:9 - [A2093187]

[Protest against Rejection of Bid as Nonresponsive]. B-188331.
July 26, 1977. 3 pp.

Decision re: Radalab, Inc.; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).
Organization Concerned: Department of the Army: Army Electronics
Command, Fort Monmouth, NJ.
Authority: Freedom of Information Act (5 U.S.C. 552). B-184221
(1976).

The protester objected to the rejection of its low bid as being nonresponsive because it failed to contain prices for various subline items as required. The bid contained only the unit price for the main item being procured. The protest was denied since prices for the subline items were required; bidders were warned not to leave any space blank and that to do so would render their bids nonresponsive; and nothing in the bid showed that the subline item prices were included in the main item. The protest was denied. (Author/SC)

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DECISION



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

FILE: B-188331

DATE: July 26, 1977

MATTER OF: Radalab, Inc.

DIGEST:

Protest by bidder who submitted bid containing only unit price for main item being procured, but no prices for subline items, and who argues that pricing requirements of invitation are ambiguous and that price for main item included prices for subline items is denied since prices for subline items for, inter alia, first article testing and technical data requirements, were required, bidders were warned not to leave any space blank and that to do so would render bid nonresponsive, and nothing in bid showed that subline item prices were included in main item. Fact that some bidders for other procurements were determined to be nonresponsive for similar failure to price subline items does not make instant invitation ambiguous.

Radalab, Inc. (Radalab), protests the rejection of its bid submitted in response to invitation for bids (IFB) No. DAAB07-77-B-1379, issued by the United States Army Electronics Command (ECOM), Fort Monmouth. The contracting officer determined that Radalab's bid was nonresponsive because it failed to contain prices for various subline (SLIN) items covering first article testing and technical data requirements among other things as required by the IFB. Award to the second low bidder has been withheld pending our resolution of the protest.

Section D (Evaluation Factors for Award) of the IFB, specifically subsection 32 provided that:

"A bidder/offeree must quote on all items in this solicitation to be eligible for award. All items will be awarded only as a unit. Evaluation of bids/offers will be based, among other factors, upon the total price quoted for all items."

Subsection 83.1 of IFB section "C" also provided:

"Enter prices for all items for which space has been provided in the Unit Price and/or Total Item Amount block, Section E, DD Form Proposed SDA 69E. If an

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item is offered at no charge, enter 'N'. If the item is not separately priced enter 'NSP'. DO NOT LEAVE BLANK. Failure to follow this instruction will render the bid nonresponsive. (Underlining added.)

Subsection E.1, Information to Bidders/Offerors, provided further instructions for completing the bid.

"Your attention is directed to DD Form Proposed SDA Form 69E Section E 'Supplies Line Item Data'; and DD Form Proposed SDA 69H, Section H - 'Supplies Schedule Data'; of this solicitation. The Contract Line Item (CLIN) - i.e., (0001) in Section E serves only as a common denominator for the accumulation of management data by the Government. Pricing will not be entered at this level. Requirements for each CLIN are set forth in the associated alpha suffix subline item (SLIN) i.e., (0001AA). All pricing, payment, and delivery will be at the alpha suffix SLIN level. When a unit price is not required for a particular SLIN, the letter 'N' will appear in the unit price block, indicating that a unit price is not applicable. See subsection C.83.1 for additional information for completing unit price/total item amount blocks. * * *"

Radalab did not submit a "TOTAL ITEM AMOUNT," or any other price for SLIN's Nos. 0002AA through 0005AA. The only price submitted by Radalab was a unit price for item No. 0001AA, the main hardware item being procured, a Test Facilities Kit, Telephone Carrier, MK-155/TCC.

The protester argues that, in light of the pricing instructions contained in sections C.83.1 and E.1 of the IFB, the Government created an ambiguous solicitation by putting "N's" in the unit price blocks of SLIN items 0002AA through 0005AA. Thus, in submitting one price for item No. 0001AA, Radalab intended this price to include all other items in section "E". In addition, Radalab concludes that since its reading of the IFB was reasonable in light of the ambiguous nature of the IFB and that an ambiguous solicitation should be construed against the drafting party, Radalab is, responsive and, therefore, should be awarded the contract.

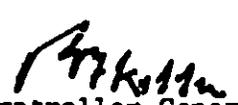
We believe that the Radalab bid was properly rejected as nonresponsive to the terms of the IFB. In J. & H. Smith Mfg. Co., Inc., B-184221, February 6, 1976, 76-1 CPD 78, after considering substantially identical pricing and IFB requirements, our Office determined that the requirements were not ambiguous, and we denied the protest against the rejection as nonresponsive of a low bid which, as here, contained a price for the main

item but no subline item prices. We concluded that nothing in the rejected bid showed that the price for the subline items was included in the main item price. We stated:

"* * * Subsection 83 of the invitation, quoted above, commanded that prices should be inserted for all items * * * for which space has been provided in the Unit and/or Amount block * * *. (Emphasis supplied.) This provision, indeed, contrary to the J & H allegations, appears to contemplate that in some instances unit prices might not be required although a total amount price would be required. Further, all spaces in section E which dealt with unit or total prices were marked with the letter 'N' (Not applicable) except for the unit and total price spaces provided for the antennas and the total price spaces provided for subitems Nos. 0003AA, 0003AB, and 0003AC. It would seem strange, especially (and contrary to counsel's belief) as none of the item No. 0003 price spaces were left blank (all were marked with an 'N'), that where no 'N' was inserted for the subitem total prices one would - or could indeed - presume that the insertion of prices was unnecessary.* * *"

In an effort to prove the ambiguous nature of the IFB, Radalab instituted a search pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (1970), of ECOM's recent procurement history of IFB's containing a section "E" as did the instant IFB. This was an attempt to show that a large percentage of disqualified bidders (nonresponsive) had misinterpreted section "E" of the IFB. The Army advises that, of 14 IFB's, three (including the instant IFB) involved bidders in line for award disqualified for failure to bid on all items; eight contracts were awarded to the low bidder; two contracts have not been awarded but low bidder completed all items; and one IFB was canceled. Other information on recent IFB's was supplied. This does not strengthen Radalab's argument to prove the ambiguous nature of the IFB. In any event, we agree with the contracting officer that the pertinent matter for inquiry is what specifically occurred here not what may or may not have prompted others to fail to complete other section "E's."

In view of the foregoing, the protest is denied.


Deputy Comptroller General
of the United States