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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20540**

FILE: B-189947

DATE: December 7, 1977

MATTER OF: Spectrolab, Inc.

**DIGEST:**

1. Notwithstanding blanket statement of compliance in bid cover letter, bid must be rejected because descriptive data submitted with bid creates ambiguity as to whether unit offered complies with specifications. Moreover, ambiguity which appears on face of bid may not be clarified by bidder's statements obtained after bid opening.
2. Even though sales brochure submitted with bid states that bidder's standard equipment is available with additional capability at additional charge and Government sought bids for equipment possessing such additional capability, firm fixed bid is construed as reflecting price for satisfying requirements specified by Government.
3. Where item described in successful bid did not satisfy overstated requirement specified by Government but met Government's actual need and protester's bid offered an item similar to that of successful bidder, protester was not prejudiced and contract need not be terminated.

Spectrolab, Inc. (Spectrolab) protests rejection of its bid for being nonresponsive to invitation for bids (IFB No. NOAA 30-77 issued by the National Oceanic and Atmospheric Administration, Department of Commerce (NOAA). Spectrolab contends its bid fully complied with the IFB and that the reasons for its rejection were arbitrary and improper.

The IFB called for bids for the construction and delivery of 50 normal incidence pyrheliometers, an instrument for measuring the sun's radiant energy as received at the earth, with equatorial mounts for the Solar Radiation Calibration Facility of NOAA. The solicitation required a sensing element as follows:

"3.3 Sensing Element. The sensing element shall be of such a design so as to produce the specified performance characteristics. Proven sensor design is required so that the burden of proof is on the bidder. A description of the sensing element to be used in the pyrheliometer, along with documented test data bearing on the performance characteristics of the element must be a part of the bid response. Failure to furnish this information will cause the bid to be considered nonresponsive."

The cover letter to Spectrolab's bid stated that its offer was "in strict and full compliance with all requirements of the Invitation for Bids" and that Appendix A to the bid contained "documentation (Articles I-II) to substantiate the performance characteristics of the sensing element." Article I of Appendix A stated that "The critical performance characteristics of IFB NOAA 30-77 are included in the National Weather Service specification # A105-SP001." (NWS specification) The Appendix further stated that the Spectrolab SR-75 met the NWS specification which pertained to a pyranometer, an instrument for measuring radiation from the sky, which used the same sensing element as in the pyrheliometer offered by Spectrolab.

After bid opening NOAA tested several Spectrolab SR-75 pyranometers received under a previous contract and found that their sensors did not meet the requirements of this procurement. It informed Spectrolab of the tests and its determination that Spectrolab's bid was nonresponsive. It further informed Spectrolab that award had been made to a higher bidder, The Eppley Laboratories, Inc. (Eppley). Upon protest by Spectrolab, NOAA determined its basis for the initial rejection of Spectrolab's bid was improper. However, NOAA informed Spectrolab that its bid was still considered nonresponsive because the documentation furnished with its bid indicated that it was offering a sensing element which did not meet the solicitation's specifications.

Spectrolab then protested to this Office. It points out that the initial rejection of its bid and award to Eppley was made on a basis which NOAA now admits was improper. Spectrolab contends the statement in its bid

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cover letter assures full compliance with the IFB and removes any ambiguity, if any existed, which might have arisen as a result of its statements in the Appendix of its bid. Spectrolab asserts that NOAA should have sought clarification from Spectrolab. It further contends the documented test data submitted with its bid demonstrates that the sensing element offered "is capable of providing the performance specified in the solicitation." Spectrolab asserts that Eppley made no statement of strict compliance and that the item offered by Eppley did not, in fact, fully comply with the specifications in other respects.

While conceding that its grounds for the initial rejection of Spectrolab's bid were improper, NOAA insists that other grounds exist for rejecting the bid. It states that Appendix A submitted by Spectrolab in addition to the descriptive literature required in connection with the sensing element, qualified the bid or rendered it so ambiguous as to require rejection. It asserts that Appendix A constituted unsolicited descriptive literature and could not be disregarded under Federal Procurement Regulations (FPR), Section 1-2.202-5(f).

NOAA denies that the critical performance characteristics for the pyr heliometer required by this IFB are included in the NWS specification for a pyranometer. It contends that the documented test data submitted by Spectrolab with its bid was taken from the calibration of a pyranometer rather than a pyr heliometer and establishes only the gross sensitivity or calibration factor for the pyranometer when compared with a similar instrument. It states the test data was incomplete and did not provide the overall characteristics necessary to evaluate the sensing element as used in the pyr heliometer.

If Spectrolab's bid was not, in fact, fully responsive to the IFB, the fact NOAA may have initially rejected it upon improper grounds is of no consequence because the interests of Spectrolab would not thereby have been prejudiced. The responsiveness of its bid depends upon whether Spectrolab, if its bid had been accepted, would have been legally bound to supply pyr heliometers fully complying with the specifications. 49 Comp. Gen. 289 (1969). Descriptive data submitted with a bid may not be disregarded for purposes of determining bid responsiveness where it

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appears that the bidder is offering the unit described by such data. 56 Comp. Gen. 334 (1977). In the instant case, it is clear Spectrolab offered the sensing element described in Appendix A to its bid and it does not matter whether such data was solicited as Spectrolab contends or unsolicited as characterized by NOAA.

The statement in Spectrolab's bid that the critical performance characteristics of this IFB "are included in the National Weather Service specification # A105-SP001" is ambiguous in view of the fact that the specifications are for two different instruments with different performance characteristics. Neither specification refers to the other. The fact that test data for a sensing element meets all of the requirements for a pyranometer does not prove that it will meet more demanding requirements of the instant pyrliometer. The critical performance characteristics of the two instruments differ with regard to maximum sensitivity, impedance, maximum wind speed and linearity with the specification for the pyrliometer being the more demanding. Spectrolab has not contested this fact in its rebuttal. In our opinion, Spectrolab did not meet the required burden of proving that its sensor design would produce the performance characteristics specified for the pyrliometer. We think the bid was ambiguous on its face and was properly rejected as nonresponsive.

By itself, a blanket statement of compliance is not sufficient to remove an ambiguity in the bid. International Signal & Control Corp.; Stewart Warner Corporation, B-185868, March 16, 1976, 76-1 CPD 180. A blanket offer of full compliance might be submitted by a bidder who thoroughly understands the requirements or by a bidder who has overlooked or misunderstood them.

Spectrolab cites 41 Comp. Gen. 620 (1962) in support of its assertion that NOAA should have sought clarification from it. In that case, however, the required information supplied by the bidder indicated full compliance with the specifications. Because of doubts about the information, the agency sought clarification from suppliers of the bidder. We held that the bidder itself was entitled

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to be heard before its bid, which was not unresponsive on its face, could be rejected. That case is not controlling here where the ambiguity appears in the bid as submitted. See 51 Comp. Gen. 141 (1971).

Spectrolab further contends that Eppley's bid was nonresponsive because it offered compliance with the required temperature dependence only at an additional charge. The specification required that the electrical impedance not exceed 500 ohms over a temperature range of  $-40^{\circ}\text{C}$  to  $+40^{\circ}\text{C}$ . Eppley's bid contained a sales brochure indicating that its pyrhelimeter had a temperature dependence of 1 percent over ambient temperature range of  $-20$  to  $+40^{\circ}\text{C}$ . It also stated that the range could be extended "at an additional charge" within the limits of  $-70^{\circ}\text{C}$  to  $+50^{\circ}\text{C}$ .

In our opinion the brochure only indicates that normally one can expect to pay more for the extended temperature range capability. It quotes no price for equipment with either the standard or extended range. If, as here, a bidder submits a firm fixed bid, this normally is the price intended for satisfying the requirements specified by the Government, absent a specific contrary reservation or an allegation and proof of mistake by bidder. We find insufficient reason to question whether the bid price reflected the correct charge for the Government's requirements in this regard or for concluding that the brochure should be construed as entitling the bidder to obtain an increase in its bid price for the promised performance.

Finally, NOAA concedes that the pyrhelimeter offered by Eppley does not fully meet the requirement that the output shall be linear within 1 watt per square meter from 0 to 1500 watts per square meter. It states that it believes the specification is in error and should have been stated as plus or minus 0.5 percent from 0 to 1500 watts per square meter in which case Eppley's unit would be compliant. Moreover, NOAA points out that Spectrolab's proposed units had a linearity similar to that of Eppley's units.

It appears that NOAA's specification was defective with respect to the linearity requirement and that the Eppley pyrhelimeter meets the actual need of the Government. It is also clear that Spectrolab suffered

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no prejudice from the defective specification and the acceptance of a nonconforming item because Spectrolab's proposed units had a linearity similar to that of the Eppley units and because its proposal was rejected for other sufficient reasons. Thus, we think this defect does not merit disturbing the award at this time. A reprocurement to specifications corrected to match the linearity now provided by the Eppley units would place form over substance. The utilization of a deficient specification which nevertheless produced offers satisfying the actual needs of the Government does not, in the absence of prejudice, constitute a compelling reason to cancel a solicitation. 52 Comp. Gen. 285 (1972). Similarly, we do not recommend termination of a nearly completed contract for urgently needed supplies.

Accordingly, this protest is denied.

  
Deputy Comptroller General  
of the United States