

Proc. - I

DECISION



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

9711

FILE: B-193238

DATE: April 3, 1979

MATTER OF: TM Systems, Inc. [REQUEST for Reconsideration]

CN600710

DIGEST:

Prior decision is affirmed upon recon- sideration as portion of step-one pro- posal cited by bidder is not found to be sufficient commitment to supply subitem which bidder failed to price in second- step bid and bidder's workpapers may not be considered after bid opening to show bidder's intent and to render non- responsive bid responsive. Further, fact that agency found step-one proposal acceptable does not preclude rejection of step-two bid which omitted price for subitem deemed material.

AGC 00030

TM Systems, Inc. (TM), has requested reconsi- deration of our decision in the matter of Federal Aviation Administration, B-193238, February 27, 1979, 79-1 CPD 136, in which we found the bid of TM, submitted under solicitation No. LGM-8-7025, to be nonresponsive.

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The solicitation, the second step of a two-step procurement, was for a quantity of tone suppression amplifiers and related data. Neither TM, the low bidder, nor Univox-California, Inc. (Univox), the second low bidder, had inserted a price in the bid schedule for subitem 10f (Master Pattern and Plan View of Parts Layout). Since the FAA's technical personnel viewed the subitem as material and TM's step-one technical proposal did not discuss the furnishing of the subitem, we held that TM's bid could not be accepted for award. However, as the technical proposal of Univox contained a specific commitment to furnish the referenced subitem, we held that it was clear Univox intended to be bound by the terms of the specifications notwithstanding its failure to price the subitem.

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We reached the above decision based on the principle that an offeror found acceptable under step one would not likely disqualify its step-two bid by inserting a condition in contradiction of its accepted step-one proposal. Spectrolab, a Division of Textron, Inc., B-180008, June 12, 1974, 74-1 CPD 321.

TM's request for reconsideration is based on the contentions that its first-step proposal did reference the supplying of subitem 10f, the submission of work-papers which show TM intended to bid the subitem at no charge and the fact that the FAA had found its technical proposal acceptable.

TM cites the following portion of its proposal, which relates to company experience, as showing that it intended to furnish subitem 10f:

"1.2 Company Experience: TM SYSTEMS as a company and its key employees have had much experience in providing equipments of this type. In addition to the technical expertise we possess - also of prime importance is our capability to manage a program of this nature. Specifically, the ancillary requirements of Qualification Testing, R/M Testing, Instruction Books, and Spare Parts Documentation can be equally burdensome to a firm not versed in these disciplines. TM SYSTEMS has also had extensive experience in preparing these items - and is, therefore, in a unique position to satisfactorily fulfill the complete requirements of this solicitation."

We do not find this portion of TM's step-one technical proposal, dealing only with company experience, to be a sufficient commitment to supply subitem 10f so as to overcome its failure to price the subitem in the step-two invitation for bids. Conversely, as noted above, Univox's technical proposal contained a paragraph specifically dealing with subitem 10f.

While TM has submitted workpapers which its states show that subitem 10f was to be supplied at no charge, such evidence may not be considered after bid opening in an effort to render a nonresponsive bid responsive. General Engineering and Machine Works, Inc., B-190379, January 5, 1978, 78-1 CPD 9. Further, we note that TM did insert "N/C" in three subitems of data and priced the other two subitems of item 10, so it appears that TM was aware that it had an obligation to insert something, even "N/C," for each subitem.

Regarding TM's final contention, that since the FAA found its proposal technically acceptable, our Office should not review such determination absent an allegation of fraud or the failure to apply definitive criteria, TM has confused the determination of proposal acceptability with our Office's policy regarding affirmative determinations of a bidder's responsibility. We no longer review these latter responsibility determinations absent an allegation of fraud or the presence of definitive responsibility criteria. Mayfair Construction Company, B-192670, November 28, 1978, 78-2 CPD 372.

However, our Office does render decisions regarding the responsiveness of bids and here the FAA requested an advance decision from our Office concerning the propriety of accepting either TM's or Univox's bid under step two. This was the issue discussed in our prior decision and here.

The FAA determination of technical acceptability of the proposals, which our Office does not question, was made at the conclusion of step one, prior to the submission of the step-two bids. If TM had submitted a price for subitem 10f, its bid would have been responsive. However, when the price for the subitem was omitted, it became necessary to examine the step-one technical proposals to ascertain if there was a definite commitment to furnish the subitem in question. That commitment was lacking here insofar as TM is concerned.

For the foregoing reasons, we affirm our decision
of February 27, 1979.



Deputy Comptroller General
of the United States