

117-632

Phillips

**DECISION**



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

20946

**FILE:** B-204895 **DATE:** February 25, 1982

**MATTER OF:** Atlantic Scientific Corporation

**DIGEST:**

Low bid was improperly rejected as nonresponsive, even if amendment to solicitation which extended bid opening date and made other changes in specifications was not formally or explicitly acknowledged, where there is implied acknowledgment of receipt of that amendment evidenced by bid dated 2 days prior to extended bid opening date.

Atlantic Scientific Corporation (Atlantic) protests the rejection of its low bid under invitation for bids No. DAAD07-81-B-0085, issued by the United States Army White Sands Missile Range, for 55 tracking systems interface.

For the following reasons, we sustain the protest.

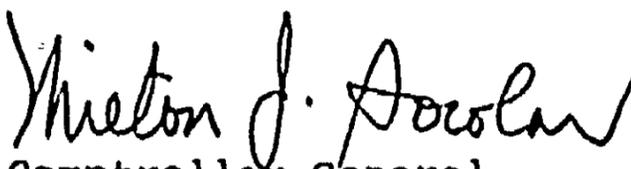
The solicitation was issued on June 30, 1981. According to the contracting officer, several prospective bidders complained that the solicitation drawings were either illegible or incomplete. Therefore, it was decided that an amendment was necessary. On July 22, 1981, amendment 0001 was issued extending the bid opening date from July 31, 1981, to August 14, 1981. The contracting officer states that the amendment also provided a clear and readable set of drawings, added a page to the drawings, clarified page numbering, and provided an updated parts list. This updated list included parts on the original drawings which were not included on the original parts list, as well as power cords not referenced on the original drawings.

Atlantic submitted the low bid. However, the bid was rejected as nonresponsive since Atlantic failed to acknowledge amendment 0001. Award was made to the next low bidder, RMS Technology Inc. (RMS), on September 14, 1981.

Atlantic protests the nonresponsiveness determination because the amendment was signed and returned; in the alternative, the amendment was immaterial and ambiguous as to the mode of acknowledgment. The agency contends that the amendment was not received, the bid did not indicate receipt, and the amendment was material.

We need not resolve the specific issues raised by the parties. The Atlantic bid is dated August 12, 1981, 2 days before the extended bid opening date. In Inscom Electronics Corporation, 53 Comp. Gen. 569 (1974), 74-1 CPD 56, we held that where, as here, a low bid was dated 2 days before an extended bid opening date, this clearly reflected the low bidder's knowledge of the existence of the amendment extending the opening date and constituted an implied acknowledgment of the receipt of the amendment. In these circumstances, the bidder is bound to perform all of the amendment changes at the bid price. See Algernon Blair, Inc., B-182626, February 4, 1975, 75-1 CPD 76. In view thereof, we conclude that Atlantic's bid should not have been rejected as nonresponsive, and we sustain the protest.

The agency has advised that delivery under the contract is scheduled for July 1982. Therefore, we recommend that the agency consider the feasibility and practicality of terminating the contract awarded to RMS for the convenience of the Government. If termination is possible, and Atlantic is otherwise eligible for award, the contract should be awarded to Atlantic at its bid price.

*for*   
Comptroller General  
of the United States



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

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February 25, 1982

The Honorable John O. Marsh  
The Secretary of the Army

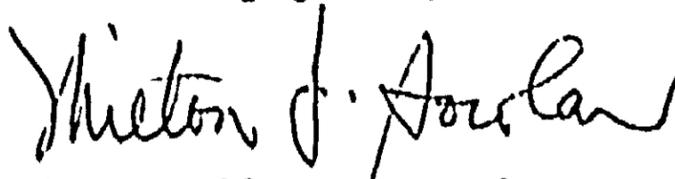
Dear Mr. Secretary:

We refer to a letter dated November 17, 1981, reference DRCGC-P, from the Command Counsel, Army Materiel Development and Readiness Command, furnishing us a report concerning the protest of Atlantic Scientific Corporation (Atlantic) under solicitation No. DAAD07-81-B-0085, issued by the United States Army White Sands Missile Range, New Mexico.

Enclosed is a copy of our decision of today wherein we recommend that your agency consider the feasibility and practicality of terminating for the convenience of the Government the contract awarded to RMS Technology Inc, and awarding the contract to Atlantic at its bid price.

We would appreciate receiving advice of the action taken on our recommendation.

Sincerely yours,

*for*   
Comptroller General  
of the United States

Enclosure