

DECISION



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

26879

FILE: B-212004

DATE: November 17, 1983

MATTER OF: Minnesota Mining and Manufacturing Company

DIGEST:

1. Protest alleging that awardee's bid was nonresponsive to IFB specifications is denied since awardee's bid took no exception to IFB specifications. Furthermore, whether awardee will perform contract in accord with the IFB specifications is a matter of contract administration which GAO does not review under Bid Protest Procedures.
2. Protest that protester's bid was improperly determined to be nonresponsive to all IFB specifications is denied. Even though protester's bid offered to meet all IFB requirements, bid was accompanied by brochure which qualified bid and showed that product offered by protester in bid did not meet speed requirement set forth in IFB.
3. Protest alleging that agency improperly evaluated protester's bid prices will not be considered because protester's bid was otherwise nonresponsive and ineligible for award. Accordingly, protest is academic.
4. Protest alleging ambiguity in IFB specifications is untimely where record shows that alleged defect was known to protester before bid opening, but was not filed in our Office until after bid opening date. 4 C.F.R. § 21.2(b)(1) (1983).

Minnesota Mining and Manufacturing Company (3M) protests the Department of the Army's award of a contract to Rapicom, Inc. (Rapicom), for lease and maintenance of digital facsimile transceivers and related equipment pursuant to invitation for bids (IFB) No. DAKF10-83-B-0086. 3M protests

027295

that Rapicom's bid was nonresponsive to the IFB's requirement that each transceiver weigh at most 60 pounds, and 3M contends that the Army improperly determined that 3M's bid was nonresponsive because it did not meet the IFB's requirement that transceivers perform at certain speeds. 3M also argues that the Army improperly evaluated 3M's bid by adding an extra charge for preventative maintenance performed "in the field" (which was included in 3M's bid as an option) to 3M's basic bid price for the transceiver units; without the addition of that charge, 3M's total bid price would have been lower than Rapicom's total bid price. In the alternative, 3M argues that the IFB was ambiguous with regard to whether preventative maintenance was to be performed "in the field" or "at the depot."

We dismiss the protest in part and deny it in part.

Regarding 3M's charge that Rapicom's bid was nonresponsive to the IFB's weight requirement, our examination of Rapicom's bid shows that it took no exception to any of the IFB's requirements. The Rapicom bid, therefore, was responsive as submitted--that is, it represented an unqualified offer to meet the Army's needs as described in the IFB. See NGC Investment and Development Corp., B-209982, January 13, 1983, 83-1 CPD 36. Furthermore, whether Rapicom will perform the contract in accordance with the specifications is a matter of contract administration, which we do not review under our Bid Protest Procedures (4 C.F.R. part 21 (1983)). See NGC Investment and Development Corp., supra.

Concerning whether 3M's bid was responsive to the IFB, the subject IFB specified in paragraph Cl.1b that the digital facsimile transceivers must be able to transmit and receive at a speed of a full page Group III - less than 1 minute and Group II - 3 minutes per page - and referred bidders to paragraph H-5 for an explanation of Group II and Group III machines. Paragraph H-5 explained that these machine groups were derived from the Consultative Committee of International Telephone and Telegraph (CCITT) recommendations which contain standards for this type of equipment. Both the protester and the Army supplied our Office with a copy of the CCITT recommendations which were incorporated into the IFB. The standards contained therein state that the data signaling rate for Group III apparatus is to be 4,800 bits per second (because the majority of messages would be received at this rate) with a fallback capability of 2,400 bits per second (because a lower proportion of messages would be received at this rate). The brochure which 3M submitted with its bid showed that its offered machine operates at 2,400 bits per second. Also, at a

conference held on this protest, 3M admitted that its offered product did not operate at 4,800 bits per second. Accordingly, the Army's evaluators determined that 3M's bid did not meet the required speed standard and was nonresponsive. In view of the fact that the brochure 3M submitted with its bid showed a material deviation from the IFB's speed requirement and in spite of the fact that 3M's bid otherwise indicated compliance with this specification, we conclude that the 3M bid was noncompliant and was properly determined to be nonresponsive. See LogE/Spatial Data Systems, Inc., B-205106, May 17, 1982, 82-1 CPD 465, wherein we held that a bid which offered to meet all specifications was nonresponsive because unsolicited descriptive literature had qualified the otherwise responsive bid. Therefore, 3M's protest on this point is denied.

Since 3M was properly determined to be nonresponsive, we need not consider 3M's charge that the Army improperly evaluated its bid. Due to the nonresponsiveness of its bid to the IFB's speed requirement, 3M was not eligible for award in any event. Therefore, a decision concerning how 3M's bid prices should have been evaluated would have no effect on the outcome of this competition. Accordingly, this issue of protest is academic. See American Marine Decking Systems, Inc., B-197987, September 22, 1980, 80-2 CPD 217; M&M Services, Inc.; EPD Enterprises, Inc., B-208148.3, B-208148.4, May 23, 1983, 83-1 CPD 546.

Insofar as 3M's protest is based upon the IFB's alleged ambiguity concerning the location at which preventative maintenance would have to be performed, the protest is untimely. Under our Bid Protest Procedures, an ambiguity in an IFB which is apparent to the protester before bid opening must be filed before bid opening in order to be considered on its merits. 4 C.F.R. § 21.2(b)(1). Here, the record shows that 3M was aware of the alleged ambiguity regarding preventative maintenance before bid opening, but did not file its protest until after bids were opened. Therefore, this issue will not be considered further.

In accord with the above discussion, this protest is dismissed in part and denied in part.

for *Harry D. Van Cleve*
Comptroller General
of the United States