

DECISION

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

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FILE: B-213579**DATE:** April 9, 1984**MATTER OF:** Inland Associates**DIGEST:**

Bid introducing ambiguity concerning FCC registration of modem should not have been rejected as nonresponsive to IFB requiring registration. Since registration status is a matter of public record, agency could have readily determined that modem was registered, and bidder was obligated to furnish a registered modem.

Inland Associates protests the rejection of its low bid to furnish modems in response to invitation for bids (IFB) DABT 15-83-B-0087 issued by Fort Benjamin Harrison (Army). Inland's bid was rejected as nonresponsive to an IFB requirement that all modems must be registered with the Federal Communications Commission (FCC). According to Inland, its bid was responsive. We agree and sustain the protest.

The record discloses that the IFB required bidders to specify the make, model and manufacturer of the modems offered, did not contain any descriptive literature clause, but stated that the Army would evaluate bids to determine that "each and every mandatory requirement [listed as a 'salient feature'] is met." Both Inland and the awardee submitted standard commercial literature describing the modems they bid. Inland offered Racal-Vadic VA4840P modems which Inland's one-page literature described as FCC approved for direct connection to telephone lines. The Army concedes that Inland offered duly registered modems having an assigned FCC registration number, although it says it did not know that at the time.

The Army rejected Inland's bid because its literature also contained the statement "FCC Registration Number: Pending." The Army contends it was justified in taking this action because it understood that FCC registration was not complete until an FCC registration number was issued. The Army states that it contacted Racal-Vadic by telephone and was told the modem was not registered. According to

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the Army, Inland should bear responsibility for what occurred because Inland could have avoided rejection of its bid had its bid explained the registration status of its modem.

Inland, on the other hand, argues that the bid should not have been rejected. Inland states that the IFB did not require that it furnish the FCC registration number, argues that the modem was properly registered, and points out that its literature states that the modem was FCC approved. Inland observes that the commercial literature in question was prepared some time ago and argues that the Army should have checked with it, or the FCC, if it had doubt concerning registration. Concerning the Army's alleged telephone call to Racal-Vadic, Inland states that it has checked with the employee of that firm with whom the Army says it spoke and that she has no recollection of the conversation. Inland has also attacked the Army's credibility concerning this conversation by submitting documentation showing that the individual in question was fully aware that the modem is registered.

We agree with the Army that Inland's unsolicited descriptive literature interjected considerable ambiguity concerning registration. On the front side, the literature contained the following:

"FCC Registered, Direct-Connect

"The VA4840 series connects to the switched network via RJ41S/RJ45S or RJ26X/RJ27X programmable data jacks. It's FCC approved for direct connection to telephone lines and can also use the RJ11C standard telephone jack."

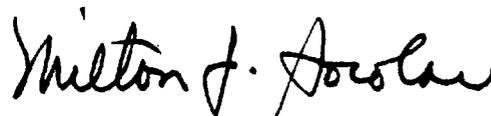
This language implies that the modem is registered. However, as stated, the back side contained the statement "FCC Registration Number: Pending." To be directly connected to telephone lines, a modem must be registered. 47 C.F.R. § 68.102. Moreover, the modem must bear an FCC Registration Number. 47 C.F.R. § 68.300. Unless a registration number is issued, this requirement cannot be met, leaving unclear how the equipment which was to be furnished could be FCC approved.

We disagree, however, with the Army's conclusion that Inland's bid was nonresponsive. It seems significant to us that registration is a matter of public record (see 47 C.F.R. § 68.102) and that the registration status of the modem could have been readily determined had the Army called the FCC. In this regard agencies have a duty to obtain reasonably available preexisting information which bears upon the proper interpretation of a bid. See Futura Company, B-193704, September 27, 1979, 79-2 CPD 227.

Moreover, since the IFB did not request descriptive literature, Inland's bid could be rejected as nonresponsive only if the literature it furnished qualified its obligation to provide the exact thing called for in the IFB. Franklin Instrument Co., Inc., B-204311, February 8, 1982, 82-1 CPD 105. By submitting its signed bid, Inland bound itself to furnish a Racal-Vadic model VA4840P modem. The VA4840P was in fact FCC registered. Because FCC registration is a matter of public record, we believe Inland would have been bound in the event of award to furnish the exact thing described in the IFB, that is, an FCC registered modem. Thus, we think Inland's bid was responsive. Edw. Kocharian Company, Inc., 58 Comp. Gen. 214 (1979), 79-1 CPD 20.

Since the contract which was awarded called for delivery within 30 days, and the protest was not filed until after award, remedial corrective action is foreclosed.

The protest is sustained.

for 
Comptroller General
of the United States

