

DECISION

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

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FILE: B-213255

DATE: April 17, 1984

MATTER OF: Continental Telephone of California

DIGEST:

1. A contracting agency may require bidders to provide descriptive literature for use in bid evaluation, so that the agency can determine exactly what a bidder proposes to furnish. Where the literature does not clearly show conformance with the specifications, rejection of the bid is required, even if the offered product in fact possesses the required characteristics.
2. Bid for telephone system which is nonresponsive because it fails to offer a required feature may not be accepted in the expectation that after award, the contractor may be compelled to supply the missing feature under the contract clause providing for the remedying of defects in workmanship and materials.
3. A specification requirement that bidders offer a telephone system with the present capability of adding station message detail recording at a later date goes to whether a bidder is offering a system currently conforming to the specifications rather than to whether the bidder had the apparent ability and capability to subsequently modify the system, and thus a requirement that descriptive literature be furnished that shows compliance with the specification goes to the responsiveness of the bid rather than to the responsibility of the bidder.

Continental Telephone of California (CONTEL) protests the rejection of its bid as nonresponsive and the subsequent award to C.P. National for two of the items under invitation for bids No. R5-10-83-61, issued by the United States Department of Agriculture, Forest Service, for the procurement of a telephone system for the Six Rivers

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National Forest. The Forest Service rejected CONTEL's bid for the two items as nonresponsive because the descriptive literature submitted by CONTEL failed to demonstrate that a telephone system offered by CONTEL conformed to the specifications. We deny the protest.

The IFB was for an integrated voice and data telephone system with options for future growth and service over a 10-year system life. As originally issued, the IFB required that the telephone system include the capability for station message detail recording (SMDR) of outgoing calls at location No. 1, the Six Rivers supervisor's office in Eureka, California (bid items No. 1, 2 and 3). The technical specifications were subsequently amended to require that the:

"System shall provide SMDR for location 1 and have the capability of adding recording to locations 2 and 3 at a later date."

Telephone equipment for location No. 2, the Orleans Ranger District, was included in bid items No. 4, 5 and 6, while equipment for location No. 3, the Mad River Ranger District, was included in bid items No. 7, 8 and 9. The Forest Service requested bids for the outright purchase of the equipment for the three locations under items No. 1, 4 and 7, for the lease of the equipment under items No. 2, 5 and 8, and for the lease of the equipment with an option to purchase under items No. 3, 6 and 9.

The Forest Service, finding that the procurement of telephone systems is highly specialized and that differences in terminology between vendors can cause confusion as to the capabilities of a system, accordingly included in the IFB a requirement for the submission of descriptive literature. The Forest Service specifically warned bidders therein that:

"Descriptive literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The manufacturer's descriptive literature is

required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to the capability of the switch to provide all lines, features, capacities, and functions anticipated over a ten-year period. (Emphasis added.)

"Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the Invitation for Bids will require rejection of the bid"

After evaluating the bids, the Forest Service decided to purchase, rather than lease, a telephone system for the three locations and accordingly made award on items No. 1, 4 and 7. Although CONTEL submitted the apparent low bid for items No. 4 and 7, its bid was found nonresponsive as to those items because the descriptive literature it supplied for the Mitel Model No. SX-20 PABX system it offered for locations No. 2 and 3 did not demonstrate that the SX-20 either currently possessed the SMDR function or had the capability for adding the function at a later date. CONTEL filed this protest with our Office after learning of the Forest Service's rejection of its bid for items No. 4 and 7 and the subsequent award to C. P. National for those items.

CONTEL concedes that the descriptive literature submitted for the SX-20 failed to demonstrate that the system possessed an SMDR capability. It states, however, that its understanding of the bid process is that since it did not state that the products it was offering were not in compliance with the specifications, it was therefore obligated by its signature on the bid to supply products meeting the specifications and thus its bid was responsive. The protester maintains that its understanding is reflected in the IFB's Inspection and Acceptance provision concerning "Defective Workmanship, Materials, and System Compliance"

which requires the contractor, notwithstanding the government's acceptance of the system, to remedy any defective workmanship or materials, or to "upgrade the system" at no cost to the government if the system fails to perform in accordance with the specifications.

In those instances where an invitation for bids, in effect, simply requires the bidder to enter a price for supplies fully described in the solicitation specifications, the bidder's signature is all that is required to obligate it to deliver conforming supplies. However, when an agency requires bidders to provide descriptive literature for use in bid evaluation, so that the agency can determine exactly what a bidder proposes to furnish, bid rejection is required when the literature does not clearly show conformance with the specifications, see Calma Company, B-209260.2, June 28, 1983, 83-2 CPD 31; Brady Mechanical, Inc., B-206803, June 7, 1983, 83-1 CPD 613, even if the offered product in fact possesses the required characteristics. See Gulf & Western Healthcare, Inc., B-209684, B-210466, August 25, 1983, 83-2 CPD 248. We are aware of no authority to support CONTEL's theory that a bid which is nonresponsive because it fails to offer a feature required by the specifications may be accepted in the expectation that the contractor may be compelled after award to supply the missing feature to "remedy" a "defect" in its workmanship or materials.

CONTEL further contends that the question of the "capability of adding recording . . . at a later date" is one of its responsibility rather than of the responsiveness of its bid, and that therefore CONTEL should have been allowed to submit after bid opening information showing that it had that capability. CONTEL alleges that such information was provided to contracting officials prior to award.

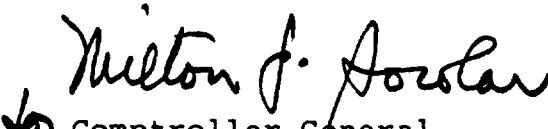
Responsiveness concerns whether a bidder has unequivocally offered to provide supplies or services in conformity with the material terms and conditions of the solicitation; responsibility refers to a bidder's apparent ability and capacity to perform the contract requirements. While the responsiveness of a bid must be determined on the basis of the bid as submitted, and not on the basis of information provided after bid opening, requirements bearing on the

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responsibility of a bidder may be met after opening. See Raymond Engineering, Inc., B-211046, July 12, 1983, 83-2 CPD 83; E. H. Hughes Company, Inc., 61 Comp. Gen. 581 (1982), 82-2 CPD 189.

The requirement for the SMDR capability is found in the section of the IFB setting forth the technical specifications of the switching subsystem. The relevant specification specifically requires that the "system" have the present capability of adding SMDR at a later date for locations No. 2 and 3, not that CONTEL itself be capable of subsequently adding the SMDR requirement. Therefore, the requirement went to the capability of the system rather than to the bidder's apparent ability and capability to subsequently modify the system, and thus involves the responsiveness of the bid. Consequently, information showing that the equipment CONTEL proposed to furnish complied with the specification requirements was required to be submitted prior to bid opening. Since CONTEL's bid did not show that the SX-20 system possessed the required characteristics, CONTEL's bid for items No. 4 and 7 properly was rejected as nonresponsive.

The protest is denied.


for Comptroller General
of the United States