

DECISION

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

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FILE: B-222760 **DATE:** June 25, 1986
MATTER OF: Telex Communications, Inc.

DIGEST:

1. Protest against initial low bidder has become academic where the procuring agency subsequently rejected the bidder as nonresponsive.
2. Where protester alleges that it should have been considered the low bidder because the procuring agency should have waived the IFB's "Configuration Item Verification Review" requirement under the IFB's "Waiver of First Article" clause, protest is denied because the protester's interpretation of the clause is unreasonable.
3. Protest challenging the responsibility of the apparent low bidder is dismissed where the procuring agency advises that the bidder's responsibility is still being considered because the allegation is premature.

Telex Communications, Inc. (Telex), protests award to any bidder other than itself under invitation for bids (IFB) No. DAAB07-86-B-T017 issued by the United States Army Communications-Electronics Command (CECOM). Telex, the third low bidder, contends that the lower bidders were ineligible for award.

We dismiss in part and deny in part the protest.

The IFB was issued for 35,520 antennas. At bid opening, Automated Integrated Systems (AIS) submitted the low bid; however, CECOM determined AIS to be nonresponsive because it did not enter a price for contract line item (CLIN) No. 0003AC. R.A. Miller (Miller) was the second low bidder and currently is under consideration for award.

With respect to AIS, since its bid has been found nonresponsive, Telex's protest concerning AIS has become academic and is dismissed.

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Telex contends that it should receive the award because it in fact is the low bidder. Telex states that the IFB advises that if the government waives first article requirements, the bid will be evaluated without first article costs. Telex contends that CECOM improperly included CLIN No. 0005AA, which is the requirement for a "Configuration Item Verification Review" (CIVR), in evaluating its bid price. Telex argues that without these costs it is the lowest responsive/responsible bidder. However, CECOM reports that while Telex is entitled to waiver of the first article requirement, this does not include CLIN No. 0005AA, which is not a first article cost.

The CIVR consists of a complete technical audit of the equipment on order against drawings in the specifications and contract. The audit is to establish that "as-built" equipment (unit, assembly, module or part) is in accordance with the end product drawings. After completion of the CIVR by the contractor, a team of government personnel, at the contractor's plant, reviews the contractor's compliance with the CIVR requirements. If the CIVR validation discloses discrepancies between parts and drawings, acceptance of the equipment is halted. If the part is in error, no acceptance is made until the parts in all equipment have been corrected. If the drawing is in error, acceptance is resumed and the contractor has 5 working days to submit an appropriate Engineering Change Proposal.

Telex states that the CIVR should be waived because part IV, section "K," paragraph K.46, of the IFB states that "if First Article approval testing is waived, the First Article requirement, together with all clauses relating to First Article, will be deleted from the resulting contract." Telex further argues that the IFB stated that "the CIVR shall be completed and report submitted not later than 30 days prior to the start of First Article test." Therefore, Telex contends that it is clear that the CIVR is a "clause relating to First Article" and should be deleted when first article is waived.

While the solicitation does state that the CIVR is to be submitted no later than 30 days prior to the start of the first article test, the above summary of what the CIVR consists of makes it clear that it is not related to first article testing and is a stand-alone separate requirement. Moreover, the pricing schedule clearly sets forth what CECOM considered to be related to first article testing by stating:

"First Article effort is broken down into three (3) categories: fabrication, test plan, testing and test reports, as set forth in SLINS 0002AA, 0002AB and 0002AC."

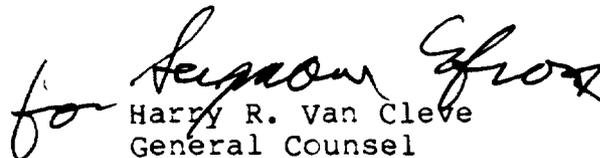
These are the three line items which were disregarded in the price evaluation for Telex and the other bidder who qualified for first article waiver.

While CECOM reports that the CIVR is based on the initial production lot of an item in the event that first article is waived, the IFB is silent in this regard. However, we believe it is clear that the CIVR was a separate requirement from first article testing and the fact that the date upon which it was to be performed where waiver of first article was granted may have been unclear, it had to be performed during contract performance. Without first article testing, CECOM's statement that it was to be performed on the initial production lot is reasonable since the purpose of the CIVR is to discover any problems with the drawings and this would have to be done early in the contract performance to be of any benefit.

Telex also contends that Miller is nonresponsible because it cannot meet paragraph L.66, which lists special standards of responsibility such as prior production rate and duration and because it allegedly is currently delinquent on other contracts. CECOM reports, however, that the responsibility of Miller is still being considered and that a preaward survey is being conducted. Therefore, this basis of protest is premature.

Finally, Telex alleges that its bid was vastly superior in quality and that superiority should offset the small difference in price. However, it is well established that in sealed bidding, award is to be made to the lowest priced responsive/responsible bidder. See Strobe Data, Inc., B-220612, Jan. 28, 1986, 86-1 C.P.D. ¶ 97.

The protest is dismissed in part and denied in part.

for 
Harry R. Van Cleave
General Counsel