



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: California Mobile Communications

File: B-223137

Date: August 20, 1986

### DIGEST

1. Bid must be rejected as nonresponsive when commercial warranty policy included with bid deviates from warranty provisions in invitation for bids.
2. Since only cases involving the responsibility of a small business firm are referred to the Small Business Administration (SBA) under its certificate of competency (COC) procedures, a contracting officer is not required to refer rejection of a nonresponsive bid to SBA for possible issuance of a COC.

### DECISION

California Mobile Communications (CMC) protests Minot Air Force Base's rejection of its bid as nonresponsive under invitation for bids (IFB) No. F32604-86-B-0092, for Motorola (or equal) portable radios and support equipment. The solicitation required a 1-year warranty, with all warranty repairs to be done on base. The Air Force rejected CMC's bid because it took exception to the required warranty terms and to a requirement for battery rechargers capable of recharging 12 batteries simultaneously.

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

In the blank provided on the bid forms for bidders to specify the required warranty period, CMC filed in "Warranty statement attached." It attached the standard commercial warranty policy from its supplier, which states (1) that the equipment is warranted for 90 days from installation and (2) that equipment to be repaired under the warranty be returned freight prepaid to the supplier's service department. CMC also stated in its bid that it would advise the Air Force of a local service representative upon award of the contract. The protester says its statement in its bid that it would name a local service representative coupled with the fact

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that it has repeatedly informed the Air Force since bid opening that it will comply with the warranty terms demonstrates that its bid is responsive. Moreover, CMC asserts, the issue of its compliance with the warranty requirement should be referred to the Small Business Administration (SBA) for final determination under the certificate of competency (COC) procedures, since CMC is a small business.

To be responsive, a bid must clearly evidence on its face the bidder's intention to comply with, and be bound by, the terms and conditions of the IFB. Champion Road Machinery International Corp., B-216167, Mar. 1, 1985, 85-1 CPD ¶ 253. For this reason, a bidder's exception to or qualification of an IFB's warranty clause renders its bid nonresponsive. Id.

In this instance, CMC's bid limited its liability under the IFB's required warranty terms. The warranty policy included with and referenced in CMC's bid was inconsistent with the IFB warranty terms since CMC offered only a 90-day warranty in lieu of the 12-month warranty required by the IFB. See Champion Road Machinery International Corp., B-216167, supra. Further, the warranty in CMC's bid required return of warranted items to the manufacturer for repair, contrary to the IFB requirement, which called for all repairs to be done on base.

Although CMC argues that the statement in its bid that a service representative would be designated shows that its bid met the warranty requirement, we do not see how this statement indicates anything more than that the protester planned to name a local service representative. It does not establish that CMC intended to service the equipment on base, much less that it would honor the 1-year warranty requirement. Further, CMC's repeated post-bid opening offers to meet the warranty requirement are not relevant because the responsiveness of a bid must be determined from the bid itself; a bidder may not change or alter its bid after bid opening to make it responsive since this would be tantamount to the submission of a new bid. Champion Road Machinery International Corp., B-216167, supra.

With regard to CMC's contention that its failure to meet the warranty requirement must be referred to SBA under its COC procedures, a bid's failure to meet an IFB warranty requirement is a matter of responsiveness, and does not relate to responsibility, which concerns a bidder's ability and

capacity to perform the contract requirements. Skyline Credit Corp., B-209193, Mar. 15, 1983, 83-1 CPD ¶ 257. Since it is only in cases involving the responsibility of a small business firm that the matter is referred to the SBA for consideration in connection with its COC procedures, Mohawk Motor Inn and Mohawk Motor Inn Restaurant, B-214846, July 24, 1984, 84-2 CPD ¶ 104, the contracting officer had no reason to forward this matter to the SBA.

Since CMC's bid was nonresponsive with respect to the required warranty terms, it is not necessary to consider whether the bid also is nonresponsive with respect to the battery charger requirement.

Finally, CMC argues that the solicitation and a number of amendments were tailored to the awardee's equipment so as to give Motorola an unfair competitive advantage. Our Bid Protest Regulations require that protests based on alleged improprieties apparent on the face of the solicitation be filed prior to bid opening so that corrective action, if appropriate, may be taken before bids are opened and competitor's prices exposed. 4 C.F.R. § 21.2(a)(1) (1986); R&B Equipment Co., B-219560.2, Sept. 5, 1985, 85-2 CPD ¶ 272. Since CMC did not raise this issue until after bid opening, it is untimely and will not be considered.

The protest is dismissed in part and denied in part.

*for*   
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General Counsel