



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: California Mobile Communications

File: B-225768

Date: April 13, 1987

DIGEST

Where bidder offers equipment that does not meet the solicitation's specifications, the procuring agency properly rejected the bid as nonresponsive, even though the bidder alleges that the wrong model number cited in its bid was an obvious clerical error since it cannot be corrected as a minor informality or irregularity.

DECISION

California Mobile Communications (CMC) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. FS-2-87, issued by the United States Forest Service, Department of Agriculture, for mobile FM radio equipment. CMC's bid was rejected because it proposed to furnish equipment that did not meet the specifications.

We deny the protest.

The IFB required bidders to propose equipment and prices for each line item, including all options and accessories and sub-items under a basic line item. Item No. 13 of the IFB required bidders to furnish 334 high-band synthesized mobile radios. Option E under Item No. 13 required that 17 of these 334 radios be UHF band with 25 watts of power. Section C of the IFB paragraph 2.10 stated that unless otherwise specified UHF range shall be from 406 to 420 megahertz (MHz).

CMC offered General Electric (GE) Phoenix series radios to meet the requirements of Item No. 13. Under option E, CMC offered to furnish GE model No. N5A12, which operates on a frequency range from 440 to 470 MHz. Since CMC offered to furnish radios for option E that operated on a different frequency range than required by the specifications, the Forest Service determined that CMC's bid on Item No. 13 was nonresponsive.

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CMC contends that it made a clerical error in its bid that the contracting officer could waive as a minor informality or irregularity in its bid. CMC advises that it intended to furnish the GE model No. N5A57 under option E, which meets the specification, but that it inadvertently filled in the wrong model number in its bid because of the organization of the GE ordering form. The GE ordering form lists models No. N5A12 and N5A57 in separate columns right next to each other on the same line. The form shows that the N5A12 and N5A57 sell for the same price. Therefore, CMC argues that its mistake was an obvious error readily apparent from the GE ordering form that the contracting officer should have waived, since it had nothing to gain by proposing nonconforming equipment. Further, CMC advises that the next highest bidder is GE and unless the contracting officer waives the error in its bid, the government will spend more money for the exact same equipment.

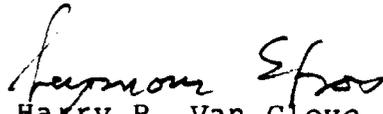
Responsiveness is determined at the time of bid opening and involves whether the bid as submitted represents an unequivocal offer to provide the product or service as specified, so that acceptance of it would bind the contractor to meet the government's needs in all significant respects. Any bid that is materially deficient in that regard must be rejected; a defect is material if it affects price, quality, quantity or delivery. Johnson Moving & Storage Co., B-221826, Mar. 19, 1986, 86-1 C.P.D. ¶ 273. Thus, a bid must be rejected if it indicates that the product offered will not comply with the specifications. Hicklin GM Power Company, B-222538, Aug. 5, 1986, 86-2 C.P.D. ¶ 153. The Forest Service reports that the radio CMC proposed will not operate in the 406 to 420 MHz UHF band required by the IFB. Since CMC offered radios for option E that materially deviated from the specifications, we find that the Forest Service properly determined that CMC's bid was nonresponsive.

Although CMC argues that the error in its bid could have been waived as an informality or minor irregularity, the error was not one that was amenable to waiver under the regulation. Under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.405 (1986), a minor informality or irregularity that may be waived is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. *Id.* Because the defect in CMC's bid was material, it could not have been waived without being prejudicial to the other

bidders, since if CMC were permitted to offer a post-opening explanation to correct its bid, it would be deciding after bids have been opened whether to accept or reject the contract. See Johnson Moving & Storage Co., B-221826, supra, 86-1 C.P.D. ¶ 273 at 3.

Finally, whether the Forest Service can realize a monetary savings if CMC is permitted to correct its bid is irrelevant because the fact that the government may realize a monetary savings if it were to accept a nonresponsive bid does not outweigh the importance of maintaining the integrity of the competitive bidding system. Meyer Tool and Mfg., Inc., B-222595, June 9, 1986, 86-1 C.P.D. ¶ 537.

The protest is denied.

for 
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General Counsel