



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Alerting Communicators of America

**File:** B-236253

**Date:** November 7, 1989

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### DIGEST

Low bid for radio-tuned siren system, which effectively conditioned adherence to required delivery schedule on agency's assignment of radio frequency prior to issuance of notice to proceed, properly was rejected as nonresponsive since this condition effectively limited the agency's otherwise unlimited right, as to timing, to assign a radio frequency.

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### DECISION

Alerting Communicators of America, Inc., has protested the rejection of its low bid as nonresponsive to the required performance schedule under invitation for bids (IFB) No. F33601-89-B-0037, issued by Wright-Patterson Air Force Base, Ohio, on April 12, 1989, for the replacement of a siren-alarm system. This system is tuned to a radio frequency for activation. Alerting contends its low bid should not have been rejected given the bid's financial advantage to the Air Force and since the company is a small business.

We deny the protest.

The IFB stipulated that the contractor was to "begin performance within 10 calendar days and complete it within 180 calendar days after receiving notice to proceed." The IFB also stated that this performance time was mandatory. Three bids, including one from Alerting, were received on May 18, 1989. Alerting's bid of \$309,545 was the lowest received,<sup>1/</sup> but Alerting added the following statement to

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<sup>1/</sup> The Air Force notes that Alerting also bid an additional charge of \$10,752 for "independent testing if required." Even with the addition of the charge, however, Alerting's bid would still be low.

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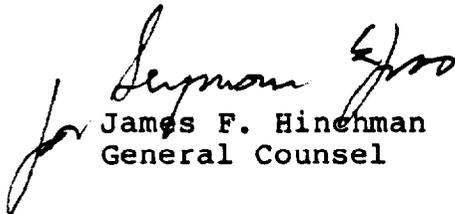
its bid: "Delivery 2/ 180 Days After Award and Radio frequency Assignment."

The Air Force subsequently rejected Alerting's low bid on the grounds that the above statement provided for an unacceptable performance time under the IFB.

Federal Acquisition Regulation (FAR) § 14-404-2(c) (FAC 84-5) provides that "[a]ny bid that fails to conform to the delivery schedule or permissible alternates stated in the invitation shall be rejected." We have also held that where a bid did not unconditionally commit the bidder to comply with the required delivery schedule, the bid was properly rejected as nonresponsive. See HoseCo, Inc., B-226420, Mar. 12, 1987, 87-1 CPD ¶ 282.

In the present case, Alerting did not commit to the required IFB delivery schedule of 180 days after receipt of notice to proceed. In this regard, we note that the IFB does not require the government to assign the radio frequency prior to award or notice to proceed. Moreover, the Air Force asserts, without rebuttal, that the contract can be commenced without the Air Force assigning a radio frequency. Consequently, Alerting's bid effectively attempted to limit the Air Force's otherwise unlimited right, as to timing, to assign a radio frequency, and effectively conditioned the bid's adherence to the required delivery schedule on Alerting's receipt of the radio frequency prior to issuance of the notice to proceed. Therefore, the bid was properly rejected as nonresponsive. Neither the financial advantage inherent in accepting the low bid nor the bidder's status as a small business concern changes this result since the need to maintain the integrity of the competitive bid system by rejecting a nonconforming bid outweighs those other considerations. Id.

We deny the protest.

  
James F. Hinenman  
General Counsel

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2/ For the purpose of this decision, we will assume Alerting's use of the word "delivery" is meant to denote "performance."