



Comptroller General  
of the United States

Washington, D.C. 20548

1136237

---

## Decision

**Matter of:** Antennas for Communications

**File:** B-253950

**Date:** July 23, 1993

---

Robert L. Cohn, Esq., for the protester.

---

### DIGEST

Bid for the supply and installation of a radome that is accompanied by a cover letter with the statement that any installation delays attributable to agency delay "shall be billed at the rate of \$1,000 per day" is nonresponsive since the bid significantly varies from the contract provision that provides for the reimbursement of actual costs for government caused delay.

---

### DECISION

Antennas For Communications (AFC) protests the rejection of its bid under invitation for bids (IFB) No. M62204-93-B-0012 issued by the United States Marine Corps for one radome, including assembly.

We dismiss the protest.

AFC included language in the cover letter submitted with its bid which provided that any installation delays attributable to the agency "shall be billed at a rate of \$1,000 per day." As a result of this language, the agency rejected AFC's bid as nonresponsive to the terms and conditions of the IFB. The protester argues that the language in the cover letter merely identifies the amount AFC intends to claim for agency delay, and does not prevent the contracting officer from finding the amount invalid and determining that AFC is entitled to a different amount.

Bid responsiveness concerns whether a bidder has unequivocally offered to provide supplies in conformity with all material terms and provisions of the IFB. Where a bidder provides information with its bid that attempts to reduce, limit, or modify a material solicitation requirement, the bid must be rejected as nonresponsive. Hewlett-Packard Co., B-216530, Feb. 13, 1985, 85-1 CPD ¶ 193. For example, a bid conditioned on payment provisions differing from those

contained in the invitation is nonresponsive because it modifies the legal obligations of the parties concerning payment under the contract contrary to the express terms of the invitation. 47 Comp. Gen. 497 (1968).

Here, the IFB included Federal Acquisition Regulation (FAR) § 52.212-15, "Government Delay of Work," which provides that "an adjustment (excluding profit) shall be made for any increase in the cost of performance" caused by government delay or interruption. Under this clause, the contractor is entitled to be reimbursed for its excess costs attributable to government delay. These costs would, not necessarily be the same as ATC's offered liquidated damage amount of \$1,000 per day. Thus, the designated liquidated damages significantly vary the parties' respective legal obligations under the IFB thereby rendering the bid nonresponsive. The protester argues that the statement of how much it will "bill" does not bind the government to pay the billed amount. However, if the government accepted the bid with this statement, it would seemingly be a part of the contract and may cause the government to be found liable at the contractor's designated liquidated amount for government-caused delay.

The protest is dismissed.

  
James A. Spangenberg  
Assistant General Counsel