

DECISION

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

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FILE: B-182006

DATE: June 4, 1975

MATTER OF: Rise, Inc.

DIGEST:

1. Prior decision concluding that low bid offering recorder without print wheel required by specification was properly found to be nonresponsive is affirmed on reconsideration.
2. Protest allegation, made after bid opening, of alleged contradiction in specification was not raised timely as contradiction was or should have been apparent prior to opening and is not, therefore, for consideration on the merits.
3. Notwithstanding untimeliness of protest, even though interpretation given to "continuously recorded" requirement of specification by protester (which, if adopted by contracting activity, would have made successful bid nonresponsive) may be valid, interpretation given requirement by contracting activity is more reasonable in view of other specification requirement. Therefore, determination that successful bid was responsive to "continuously recorded" requirement was reasonable. GAO technical personnel possessing expertise in this area were utilized in reaching conclusion.

In Matter of Rise, Inc., B-182006, January 28, 1975, our Office denied the Rise, Inc., protest against the rejection of its bid and the award of a contract to the Texas Nuclear Corporation (TNC) under invitation for bids No. DACW66-74-B-0096, issued by the Corps of Engineers, Memphis District, for the procurement of a dredge instrumentation and production metering system. The Rise bid was rejected because the recorder offered with the system did not have a print wheel as required by the specification. The award to TNC was sanctioned notwithstanding the Rise contention that a print wheel as was offered by TNC (or any recorder utilizing a print wheel) would not permit the necessary variables to "be continuously recorded in an endless sequence," as was also required by the specification. A reconsideration of that decision has been requested.

Rise raises two issues in its request for reconsideration. First, it is stated that, as regards the print wheel of the recorder, Rise took no exceptions to the specification, which it is noted was of a very broad and general nature. Secondly, Rise contends that the contracting activity should have interpreted the print wheel requirement as liberally as the activity interpreted the "continuously recorded in an endless sequence" requirement in accepting for award the recorder offered by the successful bidder. If such had been done, it is believed, Rise, as the low bidder, would have received award.

As regards the first issue, Rise, in response to the Corps of Engineers report to our Office during the original protest, set forth the following:

- "A. 'The recorder shall be capable of 3 (or multiples thereof) inputs with 3 (or 6) discrete numbers on the print wheel such that the channel number will be identified on the recorder chart.' This is the only reference to 'print wheel' in the IFB and it is immediately followed in the sentence by a dependent clause 'such that the channel number will be identified on the recorder chart.' This puts the whole thrust of the sentence into identifying the channels on the recorder chart. Our offering does that by separation of variables on the chart and with different colored ink records."

While Rise may not have intended to take any exception to the specification, the fact remains that it did offer a recorder without a print wheel. The above-quoted paragraph and the one following it, in which it was alleged that all print wheel recorders are capable of "cyclic, periodic time cycle printing" but never continuous printing, may indicate that Rise ignored the print wheel requirement in order to offer a recorder which it felt most completely met the total specification requirements. By offering a recorder without a print wheel, however, Rise, whether knowingly or not, took exception to the specification, and the Rise bid was correctly found to be nonresponsive.


As regards the second issue, Rise asserts that the contracting activity, by determining its bid to be nonresponsive to the specification, acted unfairly in liberally interpreting the "continuously recorded" requirement with respect to the successful bid. This assertion stems from the above-mentioned Rise belief that the specification, insofar as it calls for a print wheel recorder to print continuously,

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is contradictory on its face. This matter was or should have been apparent prior to bid opening, but Rise did not protest prior to bid opening. In these circumstances, the Interim Bid Protest Procedures and Standards of our Office (4 C.F.R. § 20.2(a) (1974)) provide that the protest on this issue was untimely and not for consideration.

Notwithstanding the above, we also believe that the "continuously recorded" requirement might validly be interpreted either as requiring uninterrupted printing (analog output) or as requiring the print wheel to be in constant printing operation and constantly turning (digital periodic output). In view of the requirement for the print wheel, which seems to negate the possibility of analog output, we conclude that the second interpretation of that requirement is more reasonable. Consequently, we believe that the determination of the contracting activity that the TNC bid complied with the "continuously recorded" requirement was reasonable. We utilized GAO technical personnel possessing an expertise in this area to reach our conclusion. Accordingly, in our view the acceptance of the TNC bid for award did not exhibit any unfairness in the evaluation of the responsiveness of the two bids. Matter of Paul H. Werres Company, Inc., B-182141, December 24, 1974.

Accordingly, our prior decision of January 28, 1975, is affirmed.


Deputy Comptroller General
of the United States