

DOCUMENT RESUME

08143 - [C3468565]

[Bid Including Condition for Unspecified Additional Charges Was Properly Rejected As Nonresponsive]. B-193048. December 7, 1978.
3 pp.

Decision re: Commercial Radio Co.; by Robert F. Keller, Acting Comptroller General.

Contact: Office of the General Counsel: Procurement Law II.
Organization Concerned: Department of the Air Force: Reese AFB,
TX.

Authority: 4 C.F.R. 20. B-180237 (1974).

A company protested the rejection of its bid as nonresponsive, maintaining that it included a notation that certain charges may be applied because of "indefinite evaluation factors" in the solicitation. The protest based on the alleged solicitation impropriety was filed after the bid opening and was untimely and not considered. The bid was properly rejected as nonresponsive because of the inclusion of unspecified additional charges. (HTW)

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20540

8565

FILE: 193048

DATE: December 7, 1978

MATTER OF: Commercial Radio Company

DIGEST:

1. Protest based on alleged impropriety in solicitation filed after bidding is untimely and not for consideration on the merits.
2. Bid on radio maintenance contract which is qualified by condition that unspecified additional charge will apply to portable radios, is uncertain and indefinite and must be rejected as nonresponsive.

Commercial Radio Company (Commercial) protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) F41620-78-B0011 issued by Reese Air Force Base, Texas. The IFB requested bids for the maintenance of intra-base radios.

The IFB indicated that award would be made to the responsible bidder submitting the low aggregate bid based upon an evaluation of only the monthly maintenance price for the items listed in the schedule. Although the solicitation also requested bid prices for the removal and installation of each radio unit, the IFB stated that the removal and installation prices would not be evaluated for award purposes because the Government desired to determine after award whether it would be more cost effective and feasible to perform this function with its own personnel. Commercial urges that because of the "indefinite evaluation factors" in the IFB, it inserted the notation "If Portables Are Installed In Vehicles An Additional Charge Applies * * *". The Air Force, however, determined that this legend rendered Commercial's bid nonresponsive for failure to offer a definite, fixed price as required by the IFB.

To the extent Commercial's protest concerns the clarity of the award evaluation factors set forth in the IFB, its protest is untimely filed. Section 20.2(b)(1) of our Bid Protest Procedures requires that protests based upon alleged improprieties in the solicitation must be filed prior to bid opening. 4 C.F.R. § 20.2(b)(1) (1978). Commercial's protest in this regard, filed more than two weeks after bid opening, is untimely and not for consideration on the merits.

An examination of the IFB reveals that a number of items in the schedule are vehicle mounted. (These items are identified by a 7 character notation and the letter "B" under "Equipment Location".) These items include mobile stations (MST), porta-mobile stations (PMS) and portable stations (PST). The notation "If Portables Are Installed In Vehicles An Additional Charge Applies" appeared on the first pricing page of the schedule. The Air Force could not determine whether Commercial, in using the term "portables", meant portable stations (hand held radios) or porta-mobile stations (commonly installed in vehicles and personally transported). In addition, the Air Force could not ascertain from the face of the bid the amount of the additional charge and whether the unspecified charge applied to the monthly maintenance rates or the rates for removal and installation of the items. The Air Force concluded that this language rendered Commercial's bid defective and rejected it as nonresponsive.

In an analogous situation in which a credit was to be provided the Government for silver recovered during contract performance, the bidder proposed to deduct unspecified "refining costs" from the value of the recovered silver. We concluded that since there was nothing in the bid which fixed the refining costs to any specific dollar amount, the bid was uncertain and indefinite and must be rejected as nonresponsive. H.R. Simon and Co., Inc., B-180237, March 29, 1974, 74-1 CPD 156. Even assuming the Air Force could identify

which items fall within the term "portables", it cannot be determined from the bid itself what the "additional charge" for "portables" would be and whether such charge was intended to apply to the maintenance rate or to the prices for removing and installing the items. Therefore, we conclude that Commercial submitted an ambiguous bid with an indefinite price requiring that the bid be rejected as nonresponsive.

Accordingly, the protest is denied.

R. F. Kefler
Acting Comptroller General
of the United States