

119563 Kratzen

DECISION



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

FILE: B-206311

DATE: September 27, 1982

MATTER OF: Pioneer Medical Systems

DIGEST:

1. A complaint alleging that Federal subgrantees' specifications for mobile and fixed station radio systems were unduly restrictive, filed four months after the opening of offers, was not filed within a reasonable time and therefore will not be considered. In order to be considered filed within a reasonable time, complaints based on alleged improprieties in grantee solicitations, which are apparent prior to bid opening or the closing date for receipt of initial proposal, must be filed in accordance with time standards established for bid protests in direct Federal procurements.
2. A subgrantee solicitation for radio systems, which permits deviations from specifications if the offeror demonstrates in its proposal that the deviations do not degrade the performance of the system and that the offered system meets the general intent of the specifications, does not permit an offer to propose a nonconforming system without documenting that the nonconforming system meets the performance requirements.

Pioneer Medical Systems, a division of Kel Corporation, requests that we review the award of two contracts to Motorola, Inc., under nearly identical solicitations issued by the South Carolina Midlands EMS Management Association and by the Emergency Medical Services Council, Inc. The solicitations

are for mobile and fixed station radio systems. The procurements were funded under a Department of Health and Human Services grant awarded to the State of South Carolina Department of Health and Environmental Control. The procuring entities are nongovernmental subgrantees. Pioneer contends that the specifications unduly restricted competition and that the rejection of its proposal in favor of a higher-priced proposal was improper. We dismiss the complaint in part and otherwise find it to be without merit.

Our review of complaints concerning contracts under Federal grants is limited to determining whether there has been compliance with applicable statutory requirements, agency regulations and grant terms. Union Carbide Corporation, 56 Comp. Gen. 487 (1977), 77-1 CPD 243. Under Management and Budget Circular A-110, Attachment O, a nongovernmental subgrantee may use its own procurement policies and procedures so long as the procurement adheres to certain minimum federal standards enunciated in the Circular.

Motorola and Pioneer submitted the only offers in response to the solicitation. Motorola offered to perform the Carolina Midlands requirement for \$206,418 and the Emergency Medical Systems Council requirement for \$332,458. Pioneer offered to perform the requirements for \$138,646 and \$208,535 respectively. Both procuring entities rejected Pioneer's offers because Pioneer failed to provide propagation analysis charts and because Pioneer deviated from the specifications in an unacceptable manner. The contracts were awarded to Motorola at the higher prices.

Pioneer initially contends that the specifications contained in both solicitations unduly restrict competition. We will not consider this contention. Grant complaints must be filed within a reasonable time--which means prior to bid opening in cases considering an alleged impropriety in the solicitation. Caravelle Industries, Inc., 60 Comp. Gen. 414 (1981), 81-1 CPD 317; Valley Foods, B-205485, December 7, 1981, 81-2 CPD 444. This is the same time standard that is applied to protests of directed Federal procurements. 4 C.F.R. § 21.2(b)(1) (1982). Pioneer filed its complaint with our Office four months after bid opening. Although Pioneer contends that its complaint should be deemed timely because, prior to opening, it voiced objections concerning the specifications to procuring officials, the record does not indicate that Pioneer filed a formal complaint

with those officials prior to the opening. Under the circumstances, we will not consider Pioneer's allegation of undue restrictiveness.

Pioneer next argues that the rejection of its offers was improper because the offers met the needs of the procuring entities at a significantly lower price than offered by Motorola. We disagree.

First, Pioneer did not provide the propagation analyses required by the solicitation. Rather, Pioneer requested a thirty day extension to complete the documentation. The propagation analyses are field surveys of the service areas which indicate, by contour lines, the anticipated grade of service (quality of communications) and reliability of the system offered. Detailed discussions of assumptions used to make predictions were also required. The solicitation apprised offerors that only information contained within the offers would be considered in the evaluation of offers and admonished offerors that offers may be rejected if they show any omissions or irregularities. Additionally, two solicitation evaluation criteria were "the completeness of the proposal, i.e., the degree to which it responds to all requirements and requests for information," and "the degree to which the bidder's guaranteed coverage meets or exceeds specifications." Thus, the solicitation adequately apprised offerors of the importance of submitting documentation such as the propagation analyses. It appears that full evaluation could not commence without the charts which Pioneer would not provide until thirty days after opening. We do not find unreasonable the activities' refusal to agree to this delay. Also, we have no basis upon which to question the activities' conclusion that the failure to timely submit the analyses indicated a weakness in Pioneer's engineering capabilities, another evaluation criteria.

Second, the activities concluded that the system offered by Pioneer did not conform to the specifications. The specifications detail a radio system with three basic components. The base station is a duplex

radio, that is, a radio capable of transmitting and receiving radio signals. The second unit is a vehicular repeater which is to be mounted in emergency vehicles. The repeater transmits, receives, and repeats, that is, it simultaneously retransmits, signals it receives from the base station. The third unit is a portable duplex radio which emergency personnel use when away from the emergency vehicle. The repeat function of the vehicular repeater provides added range and efficiency of transmissions received by the portable unit.

Pioneer's system concededly differs from the configuration described in the solicitation. It consists of only two units: a duplex base station and a portable duplex radio. The portable radio mounts temporarily into the emergency vehicle and must be removed from the mounting to accompany emergency personnel in the field. The system lacks the repeater function.

Pioneer offered the nonconforming system in reliance upon the following solicitation provision:

"CONFORMITY TO SPECIFICATIONS:
Wherein the bidder does not meet specifications, the bidder will so state and will furnish a written explanation of his deviation from same which demonstrates that his exception will not degrade system performance or maintainability and that he meets the general intent of the specifications. Should the bidder not indicate where he has deviated from the indicated specifications or [should he not] fully explain his deviation, his bid may be automatically disqualified. The bidder must submit performance specifications, detailed equipment lists, system descriptions and diagrams, and any other information necessary to prove compliance with these specifications."

The provision explicitly requires the offeror to demonstrate in the offer that notwithstanding deviations from the specifications, the system offered

meets the activities' needs. As the evaluators state, the specifications were based upon engineering studies which indicated that vehicular repeaters were necessary to provide satisfactory radio coverage and it was incumbent upon Pioneer to demonstrate otherwise in its proposals. Pioneer clearly failed to do so. Pioneer's offers merely state a belief that its system is more cost effective than a system that includes a vehicular repeater and assert, without documentation, that the system will provide 95 percent of the coverage expected from a repeater system. The proposals request 45 days in which to conduct a field demonstration of its system. We believe that the activities' refusal to accede to Pioneer's request and its conclusion that the offers did not demonstrate conformity with the specifications were reasonable and consistent with the terms of the solicitation.

In conclusion, Pioneer's substantial deviation from the specifications coupled with its failure to provide predicted propagation analyses reasonably justify the rejection of Pioneer's offers as nonconforming. Pioneer has not demonstrated that the activities' actions were inconsistent with the Federal standards enunciated in OMB Circular A-110 or the terms of the solicitation. Under the circumstances, we have no basis upon which to question the awards to Motorola at the higher prices.

The complaint is dismissed in part and denied in part.

Henry R. ...
Comptroller General
of the United States