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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Howard Electrical and Mechanical, Inc.  
File: B-228356  
Date: January 6, 1988

## DIGEST

1. Protest based on alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to that date. Bidder cannot challenge specifications after bid opening by including "clarifications" in its bid.
2. Bid for firm, fixed-price contract for furnishing and installing surveillance system is nonresponsive where the bid price is conditional upon the contracting agency providing telephone lines to support the system.

## DECISION

Howard Electrical and Mechanical, Inc. protests the Army's rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAKF06-87-B-0147. The solicitation contemplated the award of a firm, fixed-price contract for closed circuit television systems to provide surveillance for certain designated areas in Fort Carson, Colorado.

We deny the protest.

The Army determined at bid opening that Howard had submitted the apparent low bid. However, the Army found that the bid was qualified by statements, included in the bid as "clarifications," which conditioned the bid on the Army furnishing voice-grade phone lines; on the Army securing Federal Communication Commission (FCC) licensing for 21/23 GHZ microwave links; and on the Army furnishing shelving, cabinets, consoles or other furniture suitable for mounting monitoring equipment. The Army found that these qualifications rendered Howard's bid nonresponsive, and rejected it.

Howard argues that the specifications were imprecisely written, and that the clarifications included in the firm's bid were necessary to express more accurately what the bid

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represented. Howard contends that it made several attempts to obtain from the Army prior to bid opening the information it deemed necessary to properly bid the project, as did other bidders, but that the only further information it was able to elicit was given verbally during an on-site inspection. Howard states that the clarifications were intended simply to restate the agency's actual requirements as verbally made known to the firm during the on-site inspection. The protester notes that it could have protested the solicitation as being incomplete, but chose, rather, to insert clarifications in its bid.

At the outset, we note that to the extent the protest is directed against the allegedly improper specifications, it is untimely and will not be considered by our Office. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), provide that protests based upon alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to that date. The purpose of this rule is to enable our Office (or the contracting agency, if a formal protest is filed there) to review the matter and take effective action if warranted--for example, by recommending that the solicitation be amended--when most practicable. See Portec--Request for Reconsideration, B-224537.2, Oct. 27, 1986, 86-2 CPD ¶ 480. Here, Howard failed to protest the specifications before bid opening.

The issue before us, then, is not the adequacy of the specifications as written, but the responsiveness of Howard's bid.

The IFB required the successful contractor to design, install, make operational, and maintain closed circuit television systems to provide surveillance for designated areas, facilities and locations. The IFB statement of work specified that "all equipment as described herein shall be integrated into a fully operational system, with the capability of central control via telephone or microwave modem." The IFB also provided that the contractor "shall furnish all . . . equipment, tools, materials, . . . unless otherwise states in this specification. . . ."

The Army argues that Howard took exception to the requirement that the system be fully operational and capable of transmission by telephone, and that this qualification in Howard's bid rendered the bid nonresponsive.

Howard inserted a narrative in its bid, designated as "System Configuration and Clarifications." In connection with the requirement for central control via telephone, Howard's "System Configuration" states that "a phoneline television transmission system will be utilized to transmit

the video signals to Building 6139 [and that] four phone lines provided by the Army will be required." In the relevant "clarification," Howard states, "Bid based on Army furnishing four voice-grade phone lines to Building 9370 or A.S.P. gate house from 6139."

The question of responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the requested items or services in total conformance with the requirements specified in the IFB. Free-Flow Packaging Corp., B-204482, Feb. 23, 1982, 82-1 CPD ¶ 162. Because all bidders must compete for advertised contracts on a common basis, no individual bidder can reserve rights or immunities from responsibility that are not extended to all bidders by the conditions and specifications advertised in the IFB. Id. Where a bidder qualifies its bid to protect itself or reserves rights which are inconsistent with a material portion of the IFB, the bid must be rejected as nonresponsive. Data Controls/North Inc., B-205726, June 21, 1982, 82-1 CPD ¶ 610, affirmed upon reconsideration, B-205726.2, Aug. 16, 1982, 82-2 CPD ¶ 131.

Howard alleges that numerous attempts were made by several of the potential bidders to obtain written clarifications from the agency concerning whether phone lines would be available in various areas for the contractor's use, but that the agency refused to provide plans of the areas involved. Howard alleges that bidders were, however, given the information verbally, and that Howard's bid was based on this information. According to Howard, the clarification in its bid did not shift any costs to the government because the bid includes installing new phone lines in areas where the bidders were told no lines exist. In sum, Howard argues that the phone lines to which the clarification refers were ones which bidders were never required to furnish; the clarification was included in the bid simply to protect Howard from the imposition of this obligation after the contract was awarded.

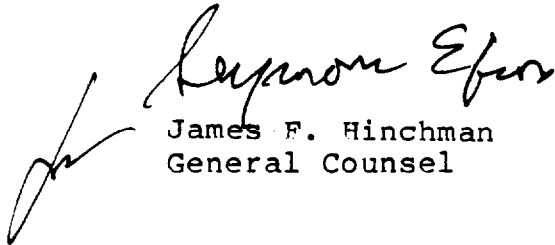
Howard is correct in asserting that the IFB does not specify whether phone lines are available or whether the contractor will be required to provide all or some of the phone lines necessary to make the system operational. However, we have been advised by the Army that although phone lines are present in the locations where Howard has specified that the agency must provide them, those lines are not available for this project's use and the successful contractor would have to provide them under the proposed contract.

In these circumstances, we believe Howard's bid falls short of an unequivocal offer. By qualifying its bid, Howard has attempted to shield itself from responsibilities from which

other bidders would not be similarly protected. Since the phone lines at issue will be required under the contract, Howard's clarification has the effect of shifting these costs to the Army. We therefore find that Howard's bid was properly rejected as nonresponsive. Having found Howard's bid nonresponsive on this basis, we need not consider whether the other two "clarifications" in Howard's bid provided additional valid bases for the bid's rejection.

Howard also asserts that its bid should be considered in any case because it was low. It is well established, however, that the importance of maintaining the integrity of the competitive bidding process outweighs any cost advantage of accepting a nonresponsive bid. See Master Security, Inc., B-225719 et al., Feb. 26, 1987, 87-1 CPD ¶ 226.

The protest is denied.



James F. Hinchman  
General Counsel