

Class
149669



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Racal Recorders, Inc.
File: B-252789
Date: July 19, 1993

Bryan E. Hopkins, Esq., for the protester.
Deidre A. Lee, National Aeronautics and Space Administration, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Any bid that does not conform to specifications as stated in the invitation for bids must be rejected as nonresponsive.
2. A protest of the propriety of an invitation for bids specification is untimely where protested after bid opening.

DECISION

Racal Recorders, Inc. protests the rejection of its low bid as nonresponsive and the award of a contract to Metrum Information Storage under invitation for bids (IFB) No. 3-515465R, issued by the National Aeronautics and Space Administration (NASA), Lewis Research Center (LeRC), for two 28-channel bi-directional instrumentation tape recorders. Racal complains that its bid was improperly rejected as nonresponsive because the agency concluded that descriptive literature submitted with the bid did not satisfy the requirements for "the tape recorder's operator interface" regarding a "frequency counter" and a digital voltmeter or "DVM" on its front panel.

We deny the protest.

The IFB was issued January 25, 1993, for two tape recorders capable of bi-directional recording and reproducing 28 data channels with an evaluated option for one additional unit. Section C of the solicitation provided several mandatory specifications that an offered item was required to meet including maximum dimensions requirements. With respect to

the front panel of the tape recorder, the solicitation provided that as a minimum, the following displays or their "functional equivalents" shall be on the front panel of the recorder:

"4. A Frequency Counter

5. A DVM with RMS (root mean squared) and DC (direct current) Displays"

The IFB contained the standard text of the Federal Acquisition Regulation (FAR) descriptive literature clause, FAR § 52.214-21, which required bids to be accompanied by descriptive literature as "required elsewhere in this solicitation." The clause defined such literature as information necessary to establish, for the purpose of evaluation and award, the significant details of the product offered as specified in the solicitation. The clause also cautioned that failure of descriptive literature to show that the product offered conformed to the IFB's requirements would result in rejection of the bid. Under the evaluation factors for award, the IFB required the descriptive literature to consist of, at a minimum, information regarding the tape recorder's operator interface, record and reproduce specifications, and compatibility with current standards as outlined in the solicitation.

In prebid opening correspondence responding to concerns raised by prospective bidders, the agency affirmed the necessity for certain specifications. First, the agency stated that the specified maximum physical size requirement would remain as written because the tape recorders will be mounted in a rack which limits the width and depth of the unit and in a control room where space is limited. Second, the agency stated that the DVM and frequency counter were required for the operator to have ready access to the characteristics of signals on different channels. The agency stated that this access must be maintained whether the tape recorder is in calibration or is recording. Because of the limited space in the control room, the agency stated that there was no room for external DVMs and frequency counters.

In response to the IFB, the agency received bids from Racal and Metrum. The bid prices, including options, were as follows:

Racal	\$ 280,231.23
Metrum	\$ 284,496.00

The agency found Racal's bid nonresponsive on the basis that the descriptive literature submitted did not establish that their offered equipment conformed to the requirements for "the tape recorder's operator interface" regarding a

frequency counter and a DVM on its front panel. Specifically, Racal's bid offered to supply a recorder with a bargraph instead of a DVM and the offered recorder did not have a frequency counter. The agency concluded that a bargraph was not an acceptable alternative to a DVM. The agency determined that Metrum's recorder met all the technical specifications and award was made to Metrum on March 12. On March 24, Racal filed this protest. The agency was not required to stay performance of the contract because the protest was filed more than 10 calendar days after award. 31 U.S.C. § 3554(d) (1988).

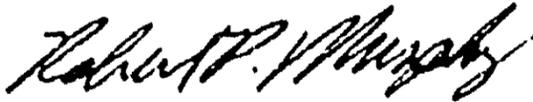
Any bid that does not conform to applicable specifications shall be rejected. FAR § 14.404-2(b). A responsive bid represents an unequivocal offer to provide the exact thing called for in the IFB such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Mechanical Resources, Inc., B-241403, Jan. 30, 1991, 91-1 CPD ¶ 93.

The specification called for a frequency counter display or its functional equivalent to be on the front panel of the recorder. NASA states that this device is necessary for the operator to check the frequency of the input signals to the recorder. Racal stated in its bid that a frequency measurement and display panel is required on recorders that provide for manual calibration. Racal argues that an external frequency counter display is not required because its recorder is automatically calibrated. Racal further maintains that the accuracy of a frequency counter is insufficient to be useful as analytical tools but is used simply for confidence checks. However, Racal concedes that the external frequency counter can be used by the recorder operator as a confidence check of the frequency of the input signals to the recorder. Racal also admits that it did not offer a recorder with a frequency counter on the front panel nor did Racal offer a functional equivalent--an external display which would allow the operator to check the frequency of the signals. Accordingly, NASA properly rejected Racal's bid as nonresponsive to the frequency counter requirement.

Racal's objections to the requirement of a frequency counter in the IFB for all recorders, including self-calibrating ones, which was affirmed by the agency in prebid opening correspondence, concerns an alleged solicitation impropriety apparent from the face of the IFB. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1993), protests against solicitation improprieties apparent prior to bid opening must be filed prior to bid opening. Racal raised this protest basis only after its bid was rejected. Since Racal

did not protest the alleged improprieties in the IFB specifications prior to bid opening, we will not consider these grounds of protest. Mechanical Resources, Inc., supra.

We deny the protest.



for James F. Hinchman
General Counsel

'The protester also argues that in order for Metrum's recorder to comply with the solicitation requirement for a recorder capable of bi-directional recording and reproducing 28 data channels, an additional housing must be added. The protester asserts that based on the descriptive literature in its possession, but not furnished with Metrum's bid, this additional housing would add 14 inches to Metrum's recorder which exceeds the solicitation dimension requirements thus making Metrum's bid nonresponsive. As the protester concedes, the descriptive literature provided by Metrum with its bid contained no dimensions which took exception to the solicitation dimension requirements and as such was an unqualified offer to provide the exact thing requested by the IFB and was, therefore, responsive. Westec Air, Inc., B-230724, July 18, 1988, 88-2 CPD ¶ 59.