



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

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May 29, 1973

Radiation Systems, Incorporated
1397 Willow Road
Menlo Park, California 94025

Attention: Mr. C. E. Hanes
Director

Gentlemen:

Reference is made to your letters of February 6 and April 9, 1973, protesting against the award of a contract to another concern under invitation for bids No. F42650-73-B-2001, issued on November 29, 1972, by Ogden Air Materiel Area, Hill Air Force Base, Utah. Although it may appear that your protest was untimely under our Interim Bid Protest Procedures and Standards (4 CFR 20.2(a)) because not filed within five days of the bid opening, we have concluded that it was filed within five days after the basis for the protest was known and is, therefore, timely.

Bids were solicited for a telemetry (TM) system with certain related services and data (items 1, 1A, 1B and 1C). The Government specifically reserved the right not to make an award for item 1B. Bids were opened on January 18, 1973, and of eight bids received, the four lowest bids are as follows:

EMR Telemetry	\$341,000
Hughes Aircraft Company	374,000
Techul Data Laboratories	387,000
Radiation Systems, Incorporated	392,000

The invitation purchase description requested prospective contractors to include with the bid a list of all equipment, the equipment specifications and integration services the bidder proposes to provide. EMR submitted two separate bound volumes with its bid. Each volume referenced the instant invitation and stated that it was prepared for this...

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invitation. EMR designated one volume as its Technical Proposal and the other as an Appendix volume. The introduction section in the Technical Proposal volume contains the following statement:

Published equipment specifications will be found in the Appendix. All stated technical specifications in these documents will be held firm for this procurement.

The Appendix volume is comprised of catalog specification sheets of EMR and proposed subcontractors which give details on the components listed in the various sections in the Technical Proposal volume. Some of the catalog specification sheets of EMR and of the proposed subcontractors in the Appendix volume contain the legend, or variation thereof, "Specifications are based on EMR test procedures and are subject to change without notice."

You contend that the statement in the introduction section of EMR's Technical Proposal and the legends on the specification sheets in EMR's Appendix volume are patently contradictory; that the two volumes attached to EMR's bid must be considered as one document in determining the responsiveness of EMR's bid; and that the statement in one volume does not as a matter of law override what is stated in another volume. Further, you contend that even if the statement in the introduction section of the Technical Proposal might bind EMR insofar as its own products are concerned, the statement would not be binding on EMR if the change in specifications were the result of a change in supplies furnished by subcontractors. For these reasons you urge that EMR's bid was nonresponsive.

The Air Force proposes to accept EMR's bid on the basis that the statement in the introduction section of EMR's Technical Proposal volume takes precedence over the "boiler-plate" statements in EMR's preprinted literature in the Appendix volume and is, therefore, responsive.

Both the Technical Proposal and the Appendix volumes were submitted with EMR's bid and both referred to the instant IFB; therefore, it is clear that each volume must be considered as part of EMR's bid. B-175028, July 10, 1972. Since the Technical Proposal volume and the Appendix volume are complementary, we find that the two must be considered as one document in interpreting EMR's bid. 49 Comp. Gen. 851 (1970).

We agree that taken by itself, the statement that specifications are subject to change without notice creates doubt concerning the bidder's intention to furnish equipment meeting the requirements of the specifications. We have held that a bid qualified in this manner must be rejected as nonresponsive since the bidder would have an option after award to deviate from the specified requirements. See B-158809, June 2, 1966, where the catalog submitted as part of the bid contained a similar statement.

However, unlike the cited case, EHR's bid included the statement in the Technical Proposal that the specifications will be held firm, which, in our opinion, removes any doubt as to EHR's intention that may result from the legend on EHR's catalog sheets that specifications are subject to change without notice. This statement, insofar as EHR is concerned, also applies to the specifications listed in the vendors' catalogs in the Appendix volume. Since EHR is acting in the capacity of a Government prime contractor, it would be obligated to furnish the system as described in the Technical Proposal and attached literature, regardless of any subcontract qualifications. We believe that the low bidder does not have the option to deviate from specified requirements as was found to be the case in B-158809, supra. Therefore, it is our conclusion that the intent of EHR's bid, based upon a reasonable construction of its entire contents, is not ambiguous or nonresponsive in this respect. 49 id. 851 supra.

The other cases cited by you involved situations where the literature furnished by bidders contained specific exceptions to particular requirements and we were unable to conclude from the bid as a whole that it was the bidder's intent to conform to the specified requirement, even though some of the bids contained an overall offer to comply with the specifications. For this reason, the instant case is distinguishable from the cases cited by you.

You also contend that EHR's bid deviates from the specification requirements in a number of other details.

First, you refer to item 33 on page 3-8 of EHR's Technical Proposal and state that the 4 direct record and the 3 direct reproduce amplifiers offered by EHR do not meet the requirement for 14 record and 14 reproduce amplifiers in the specifications. You contend that the cost difference between your bid and EHR's bid is attributable to equipment costs in this area.

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The Air Force points out that the specifications require a minimum of 2 record and 2 reproduce amplifiers and that ENR's bid exceeds this requirement. The Air Force states that the equipment was described in the solicitation in such a manner as to permit future augmentation but that nowhere in the specifications is there a present requirement for 14 record and 14 reproduce amplifiers. The report refers to a number of sections of the specifications which must be read together to arrive at the minimum requirements. The Air Force advises that the cost of additional amplifiers would be between \$8,000 and \$12,000, which is substantially less than the difference between ENR's bid and the next low bid.

In your letter commenting on Air Force's report you have quoted paragraph kk of Section IV of the Purchase Description and you urge that the requirement for amplifiers is ambiguous. You have made no further comment on the point that the specifications do not require 14 direct and 14 reproduce amplifiers. You state that the Air Force's response does not address such problems as the power supplies for additional electronics; how the 14 channels of monitoring displays can be used without 14 record and 14 reproduce amplifiers and why the Air Force would specify a 14 track recorder when only two tracks are to be utilized. You have attached a copy of a quotation you have received from Honeywell, Incorporated, which you state is that company's quotation of the minimum system required by the Purchase Description. We assume that you wish to bring to our attention the inclusion of 14 direct record amplifiers in Honeywell's quotation.

We are unable to conclude from your rebuttal that you have refuted the Air Force position that section kk read in connection with certain other sections requires a minimum of 2 record and 2 reproduce amplifiers with the capability of future expansion. While Honeywell may have included 14 amplifiers in its quotation, this does not establish that number as the minimum specification requirement in view of the Air Force's explanation.

Next you contend that ENR's bid to the maintenance requirement, item 1B of the invitation, described in Section VI of the Purchase Description, is predicated on a holiday schedule which is not authorized since page 7-4 of ENR's Technical Proposal has put the Government on notice that ENR will not provide any service on Government workdays which happen to fall on ENR observed holidays.

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It is the Air Force's view that EMR's bid was responsive to the maintenance requirement. While the Air Force has furnished an explanation of its position, this point is now moot since the Air Force has elected not to exercise the option to include the maintenance requirement in the contract and the item was not therefore included in the evaluation.

Finally, you contend that Section 7 of EMR's Technical Proposal deviates from the requirement in Section VII of the Purchase Description that the contractor shall include maintenance and operational manuals for each piece of vendor equipment, since EMR's proposal makes no mention of manuals on vendor equipment. On page 7-1 of its Technical Proposal EMR has offered to provide subsystem manuals describing the overall function and operation of each subsystem in addition to the manuals on each unit of EMR equipment. On page 1-1 of its Technical Proposal, EMR has offered to furnish complete subsystem manuals illustrating signal and power cable distribution, and mechanical assemblies for the Airborne Transmitting System, the Ground Acquisition System, and the Check Out System. We find that these two sections of EMR's Technical Proposal obligate EMR to furnish manuals on the subsystems regardless of whether it is EMR equipment or vendor equipment.

For the foregoing reasons, your protest is denied.

Sincerely yours,

Paul Q. Donbling

For the Comptroller General
of the United States