

# DECISION



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

60320

FILE: B-184824

DATE: December 22, 1975

MATTER OF: GEL Systems Inc.

~~099408~~

## DIGEST:

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1. Rejection of bid as nonresponsive to IFB specification limiting size of switching equipment is proper since according to only reasonable interpretation of limitation equipment offered by protester exceeded permissible size.
2. Requirement in IFB that bidder supply with bid proof that similar systems have been in successful operation for 1 year is not unduly restrictive of competition.
3. Allegation that IFB's "System Reliability" clause contained "equivocal" and "subjective" language is untimely, having been made 7 weeks after bid opening.
4. Rejection of bid as nonresponsive to IFB's "System Reliability" clause is proper in view of vagueness of information supplied by bidder.
5. Protester's allegations concerning meaning of "System Reliability" clause and technical acceptability of its proposal under negotiated resolicitation of requirement are premature for consideration by GAO since issues may be resolved during negotiations.

Invitation for bids (IFB) 209-23-5 was issued by the United States Information Agency (USIA) for the fabrication, test and delivery of a house monitoring and program switching system for use in the Voice of America New York Program Center Facility. On July 7, 1975, bids were opened and six bids were received, including one from GEL Systems Inc. (GEL). All bids were determined to be nonresponsive and USIA decided to cancel the IFB and resolicit by negotiation so that the specifications could be discussed with the potential contractors in an attempt to achieve acceptability.

Accordingly, USIA issued request for proposals (RFP) 17-23-6 on August 7, 1975, for the same requirement, with minor changes to and clarifications of the initial solicitation. Proposals were

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received as scheduled on September 18, 1975, and were subsequently evaluated. The proposal submitted by GEL was determined to be technically unacceptable. However, USIA had opened negotiations with all proposers, including GEL, in an attempt to achieve technically acceptable proposals by all offerors. Negotiations are currently in process and no award has been made, pending resolution of GEL's protest.

GEL protested to this Office the rejection of its bid as nonresponsive to IFB 209-23-5 for two reasons. First, USIA had determined that the equipment offered by GEL did not meet the size limitations of paragraph 3.1.3.1 of the specifications, which provides as follows:

"The switching cabinets shall occupy not more than 63 inches of vertical rack space, of a standard 19 inch wide rack."

GEL offered three standard racks, each 59 5/8 inches high and 19 inches wide.

GEL claims its bid was rejected because it offered a multiple cabinet unit rather than a single unit. However, USIA has stated that it has no objection to a multiple cabinet unit, and that GEL's bid was rejected because it exceeded the space limitation as specified in the IFB.

We feel that the specification is clear as to the space limitation since the word "cabinets" is used, the plural form, rather than cabinet or rack in the singular. Therefore, the only reasonable interpretation of the requirement is that all cabinets together must not occupy more than 63 inches of vertical space, of a 19 inch wide rack. Since GEL's bid did not comply with this requirement, the rejection of the bid as nonresponsive was proper.

Second, USIA also determined that GEL's bid did not adequately respond to paragraph I of the Instructions/Information for bidders which provides as follows:

"I. System Reliability

The house monitoring system being acquired under this solicitation must be a proven system of high quality, reliable, continuous duty equipment. The Agency considers

as a minimum, that the system offered in response to this solicitation must be similar to a system which has been in successful operation for a period of one year. Similar system, means one which utilized the same principal components as the system offered under this solicitation. Bids which offer a system which does not meet the above minimum standard will be considered nonresponsive and rejected. Bidders will submit information on similar systems with the descriptive literature required herein."

USIA states that the "System Reliability" clause was included in the IFB to assure that the equipment met the Government's minimum needs. USIA explains that this provision is required since the equipment will not only be used for broadcasting from the New York Program Facility but will also be used as a backup for the master control switching and program distribution equipment located in Washington, D.C. If the system presently being procured would fail while being utilized in its backup capacity, the entire Voice of America program would be cut off the air.

We have recognized solicitation clauses requiring proven reliability of equipment in the field as being appropriate for certain types of procurements. 48 Comp. Gen. 291 (1968). The record adequately establishes that USIA had a legitimate purpose for including the "System Reliability" clause in this procurement.

GEL's protest concerning the "System Reliability" clause appears to have two bases: that the clause employs "equivocal" and "subjective" language and that GEL was arbitrarily found not to comply with the clause requirements.

To the extent that GEL contends that the clause was defective in its expression, the protest is untimely. Section 20.2(b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975) requires that protests based upon alleged improprieties which are apparent prior to bid opening shall be filed prior to bid opening. GEL's protest was filed with our Office on August 26, 1975, approximately 7 weeks after bid opening.

Insofar as it contends that it was arbitrarily found not to comply with the "System Reliability" clause, GEL has shown a basic misunderstanding of the purpose of that provision. GEL's

stated understanding of the clause is that it is "to determine the capability of a contractor to perform \* \* \*." However, we believe the clause clearly relates to the performance history of the equipment, which is a matter of responsiveness, rather than to the bidder's capability, or responsibility. See 48 Comp. Gen. 291, 297-98 (1968).

In our view, USIA was not unreasonable in determining GEL's bid to be nonresponsive to the "System Reliability" clause. In a cover letter submitted by GEL with its bid, GEL named various Government agencies with whom it had contracted. However, GEL failed to describe definitively what kind of electronic equipment it has provided, the similarity of this equipment to the system presently being offered, or the purpose for which the equipment was provided.

Accordingly, GEL's protest against the rejection of its bid under IFB 209-23-5 is denied.

In its initial protest and by separate letter of September 17, 1975, GEL also protested the issuance of RFP 17-23-6, the solicitation which succeeded IFB 209-23-5.

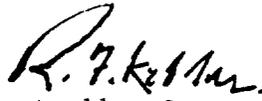
GEL alleges that the change from a formally advertised procurement to a negotiated procurement is likely to result in secrecy and favoritism. Since GEL has not supplied any specific data to support this allegation, we will not consider it further. However, we note that contracts may be negotiated without formal advertising if it would be impracticable to secure competition by formal advertising. See Federal Procurement Regulations (FPR) § 1-3.210 (1964 ed.) which, inter alia, authorizes negotiation when bids have been solicited via formal advertisement and no responsive bid has been received from a responsible bidder.

GEL also reiterates its protest against the language used in paragraph I of the Instructions/Information to Offerors which is identical in all pertinent respects to the "System Reliability" clause included in the initial IFB. Since any ambiguities or misunderstandings in proposals or specifications may be clarified during the negotiations which are to be conducted, we think GEL's protest in this regard is premature.

USIA has also indicated that GEL's proposal may be technically unacceptable. Since USIA has begun to negotiate with all offerors, including GEL, in an attempt to achieve technically acceptable proposals by all offerors, this portion of GEL's protest is also premature.

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Accordingly, GEL's protest is denied.



Deputy Comptroller General  
of the United States