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DECISION

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

FILE: B-196801

DATE: July 29, 1980

MATTER OF: Data-Chron, Inc.

D2G04996

DIGEST:

1. Bid was properly found nonresponsive where descriptive literature submitted with bid did not clearly show product was equal to brand name.
2. Blanket statement by bidder that it intends to comply with all specifications in IFB does not, by itself, make an otherwise nonresponsive bid responsive.
3. Agency properly refused to consider descriptive literature submitted after bid opening in evaluation of bid since material submitted was not publicly available prior to bid opening.
4. Protest in regard to alleged ambiguities in IFB submitted after bid opening is untimely filed under GAO Bid Protest Procedures. 4 C.F.R. § 20.2(b)(1).

Against Bid

Data-Chron, Inc. (Data-Chron), [protests rejection of its bid under invitation for bids (IFB) No. LGM-9-7566B1 issued by the Department of Transportation, Federal Aviation Administration (FAA).]

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Data-Chron was the low responsive bidder on the subject IFB which solicited bids for (time code display clocks, Manasync/Moviola Model TAC-605 or equal). The IFB included a list of salient characteristics of the brand name model an equal product was to meet and a requirement for descriptive literature to show equality. The technical officer's (TO) evaluation of Data-Chron's

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bid concluded that it was nonresponsive because the descriptive literature did not show equality. The protester disputes the TO's finding.

Although there were several reasons for rejection of the protester's bid originally, the FAA now asserts only one reason for rejection of the bid: [the bid did not show that Data-Chron's product has the capability to display time for the "IRIG-E modified format" time code as required by a salient characteristic.] This determination was made based upon the TO's reading of both the bid and descriptive literature originally submitted by Data-Chron.

[In order to assist in evaluation of Data-Chron's bid, the FAA orally asked Data-Chron to submit additional descriptive literature.] The parties are in disagreement regarding the conversation that took place between the FAA and Data-Chron when the FAA made its request. The FAA states that it informed Data-Chron that only commercially available information could be submitted after bid opening. Data-Chron contends that the FAA did not make this requirement clear. In any case, Data-Chron submitted additional information to the FAA in the form of a letter providing more details about its product along with blueprint-type drawings which described the time code display. The TO concluded that the drawings submitted--

"* * * do not give any additional information concerning the capability of the D-TAC 605 (Data-Chron's product) to read and display time from the IRIG E modified format. However, in their cover letter dated September 17, 1979, they clearly state that they will modify the TAC 604 to meet our requirements and specifically mention the D-TAC 605's capability of 'operating' from the IRIG-E modified format on 600 Hz carrier frequency."

[Because the letter submitted was not descriptive literature available to the public prior to bid opening, however, the contracting officer concluded that

this subsequent information could not be used to evaluate the bid and he rejected the bid as nonresponsive.]

In its protest, Data-Chron makes several alternative arguments. Data-Chron contends first that the descriptive literature it originally submitted in the bid package indicated that the product offered conformed to the Government's specifications. Therefore, the contracting officer had no grounds to reject the bid as nonresponsive. Second, Data-Chron says that it submitted a cover letter attached to its bid stating that the offered equipment would completely comply with the specifications. This, according to the protester, makes the bid responsive even if the bid by itself was not responsive. Third, Data-Chron claims that the FAA's specifications requesting a product that is able to read and display time for the "IRIG-E modified format" time code were ambiguous. Finally, Data-Chron contends that the additional technical data it supplied at the request of the FAA conclusively indicated that the Data-Chron product would comply with the requirements under the IFB. Data-Chron believes that the information submitted should have been used in evaluating the bid.

The FAA has responded to all points of Data-Chron's argument. [The FAA asserts that Data-Chron's descriptive literature submitted with the bid, regarding the ability of its product to read and display the IRIG-E modified format time code, was not clear. According to the FAA, since the bid did not clearly indicate that the product would satisfy all of the requirements under the IFB, the bid was properly rejected as nonresponsive.] In addition, the FAA contends that the cover letter stating that the offered equipment would comply with the specifications did not cure the failure of the descriptive to show compliance.] Further, the FAA argues that Data-Chron's complaint regarding ambiguities in the IFB is untimely under GAO Bid Protest Procedures because it was filed after bid opening. Finally, the FAA states that it could not properly consider the information submitted after bid opening because it was not available to the public prior to bid opening.

We agree with the FAA on all issues in this case.

Data-Chron claims that its descriptive literature clearly states that the product can operate according to the Government's specifications. The TO stated in his report that it was his opinion that the descriptive literature did not clearly show compliance with the IRIG-E modified format. It is clear from the submitted materials that the bidder did not specifically state that the product offered could operate under the modified format. The bid stated only that the standard IRIG-E offered could operate with variations possible in the carrier frequencies. The TO states that the "standard IRIG E time code on a carrier frequency of 600 Hz is not the same as the IRIG-E modified format or a carrier frequency of 600 Hz." In our judgment, since the descriptive literature did not clearly indicate total compliance with the IFB, it was reasonable for the TO to conclude that the Data-Chron product was not equal to the brand name. Where a bid is subject to two reasonable interpretations under one of which the bid is responsive and under the other the bid is nonresponsive, the bid is considered nonresponsive and should be rejected. Harco, Inc., B-189045, August 24, 1977, 77-2 CPD 144. It was, therefore, proper for the FAA to reject the bid as nonresponsive.

Further, the bidder's blanket statement that it has complied with the specifications does not make a bid responsive:

"By itself, a blanket statement of compliance is not sufficient to remove an ambiguity in the bid * * *. A blanket offer of full compliance might be submitted by a bidder who thoroughly understands the requirements or by a bidder who has overlooked or misunderstood them."

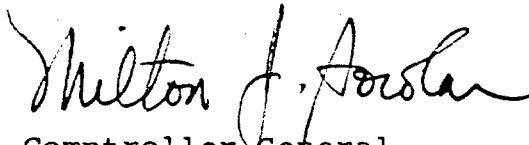
Spectrolab, Inc., B-189947, December 7, 1977, 77-2 CPD 438.

Data-Chron admits that the information it submitted after bid opening was not commercially available prior to

bid opening. Our Office has held that for descriptive literature submitted after bid opening to be properly considered, it must be commercially available prior to the date of the bid opening. Pure Air Filter International Thermal Control, Inc., B-188047, May 13, 1977, 77-1 CPD 342. Since the information submitted did not qualify under this criterion, it was properly not considered in determining the responsiveness of the bid.

Finally, the protester's complaint regarding the IFB was untimely filed with this Office. Under our Bid Protest Procedures, 4 C.F.R. part 20 (1980), "Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed prior to bid opening." 4 C.F.R. § 20.2(b)(1). Data-Chron claims that it was confused as to the requirements under the IFB and, therefore, had to make "assumptions" in submitting its bid which led to the ultimate finding that the bid was nonresponsive. This assertion clearly indicates that the alleged ambiguities were noted by Data-Chron prior to bid opening and, therefore, should have been protested prior to that time.

The protest is denied in part and dismissed in part.



For The Comptroller General
of the United States