

193

INDIVIDUAL TECHNICAL ASSISTANCE REPORT

In Response to a Request for Technical Assistance

By the

State of Texas Criminal Justice Council

September 28, 1973

NCJRS

NOV 30 1976

ACQUISITIONS

38528

Prepared by:

Public Administration Service
1313 East 60th Street
Chicago, Illinois 60637

(Per Contract J-LEAA-015-72)

CONSULTANT'S REPORT
EVALUATION OF RADIO COMMUNICATIONS PROCUREMENT POLICY

I. PRELIMINARY INFORMATION

- A. Consultant Assigned:
Sheldon A. Yefsky
Communications Consultant
Niles, Illinois
- B. Date Assignment Received:
May 31, 1973
- C. Date of Contact with LEAA Regional Coordinator:
May 31, 1973
- D. Dates of On-Site Consultation:
June 5, 1973
September 12, 1973
- E. Individuals Contacted:
Jerry Clay
Texas Criminal Justice Council

II. STATEMENT OF THE PROBLEM

- A. Problem as per Request for Technical Assistance:
Technical assistance in evaluating the Texas Radio Communication Funding Program.
- B. Problem Actually Observed:
As stated.

III. FACTS BEARING ON THE PROBLEM

See attached consultant's report.

IV. DISCUSSION OF POSSIBLE COURSES OF ACTION

See attached consultant's report.

V. RECOMMENDED COURSE OF ACTION

See attached consultant's report.

In accordance with directives of the Criminal Justice Council, an analysis has been performed of the specification methods used in the procurement of radio systems in the implementation of the Texas State Wide Radio Systems Plan. The purpose of this analysis was to determine if there are procedures or general problems inherent in the method of specification which tend to foster the problems that have been frequently encountered by the COGs subsequent to the bid openings and contract awards. For that purpose, the plan specifications prepared by the Engineer-Contractors for the West Central Texas COG and the Permian Basin and Panhandle Regional Planning Commissions have been reviewed. As an example of these vendor problems, the Council furnished the bids and correspondence for the West Central Texas COG procurement. This letter outlines general conclusions and recommendations, the details of which have been reported to the Program Director in separate communications.

Radio system specifications may be engineered using either of two basic methods. A system may be specified on a performance basis, leaving wholly or in-part the equipment engineering to the vendor. Alternatively, specifications can be written for each component of equipment. One major contrast between the two methods of procurement is the vendor responsibility subsequent to the installation. In the first case, the vendors may have significant responsibility for the over all performance of the system. If coverage is not adequate in a given area, for example, the vendor may be required to supply any additional equipment that would be needed to meet the performance requirements. In the equipment specification method, the vendor is responsible for the individual items of equipment performing within the limits set by the individual equipment specifications. Of course, procurements may use a mix of the two basic methods. In a new or complex system, such as found in aero space defense, a procurement is sometimes implemented in two stages. Vendors system designs are submitted first without cost so that the customer can select an optimum system. The next stage is a cost bid on the equipment.

The method of procurement employed by the COGs is almost solely based upon the specification of equipment. The engineering designs were not forwarded to the Consultant, and there was no review or design evaluation performed and no comment is expressed or implied in that regard in this report. From a review of the equipment specifications, it would be a natural conclusion that the Engineer had performed a detailed engineering design for the entire COG and its subsystems. With a small number of exceptions, specifications were provided for each and every item of equipment. Time and financial limitations of the COG impose a condition that the radio systems must be comprised of "off-the-shelf" equipment. In practice, then, it is an inherent responsibility for the engineer to assure that the equipment being specified is so available from, and can be supplied by the three major land-mobile vendors. A review of the equipment specified revealed that the engineers had in fact adhered closely to this specification practice. Each item of equipment listed was deemed "off-the-shelf" with only the normal amount of manufacturing "specials" and required no development.

In the West Central Texas COG, the bidder's correspondence prior to bid indicated that only a relatively few of the items were indeed questioned. Yet, within these questions lay part of the ultimate cause for the problems which occurred subsequent to the contract award. In the West Central Texas procurement, an award was made to the second lowest bidder on the basis that the low bidder was not compliant. In this situation, the Engineer-Contractor had deemed that the lowest bidder was not compliant and the second lowest bidder was compliant. The Engineer stated that the low bidder did not comply with several of the specifications. In a number of these, the Consultant concurs with the Engineer that the low bidder was not in compliance with the specifications as written.

Associated with the award itself would be questions of policy

in the following four areas:

Will the COG allow bidders to submit information after the bid opening concerning their bid that will be made part of the formal bid and might thereby be utilized in an area crucial in determining the award?

Will the COG negotiate with a bidder to bring them into compliance in either or both procedural and equipment areas?

Will the COG accept a bid which does not meet with each and every procedural and/or technical specification and waive certain requirements?

Can price dominate over compliance and under what conditions?

The policy of the COG in these four areas would bear on the award to the compliant bidder that is low. If there are special policies or procedures in any of the four areas that could have been employed by the COG for consideration of an award to the lowest bidder, then the reasons for their lack of application should be made known. If on the other hand it was the dominant policy of the COG to award to the compliant bidder that is low, then the award appears to be a fair application of such a policy (if the second lowest bidder was compliant).

The problem areas which were illuminated by the West Central Texas procurement are discussed in the following paragraphs and recommendations are made which would tend to minimize the occurrence of such problems and suggest procedures for dealing with their occurrence.

It is this Consultant's opinion that the creation of a perfect specification is not probable. Among the many reasons for this is the fact that the customer and vendor do not have completely coincidental interests, and that specifications often tend toward statements of requirement rather than quantizing in terms of absolute numbers. The Engineer must, therefore, anticipate that the bidders will question the specifications, and that they will seek variations and exceptions, and that they will bid alternatives which then require the Engineer to analyze and interpret both the bid specifications and the bids.

The common use of the bidder's conference reflects the need for customer-bidder communications as discussed above. At times, such conferences tend to become confused if only due to the fact that the attendees may be sales personnel asking engineering questions. The answers are then forwarded to their factory engineers with a somewhat different interpretation upon the answers than intended by the customer's Engineer. It is also important that all vendors become aware of any and all interpretations and all variations granted to any vendor. It is important that the customer and his representative not be made a party to any vendors strategy for competitive bidding and that any communications of a nature material to the specifications or the bid price not be conducted in any other manner but in an official manner.

The following recommendations are made regarding the bidders conference and these recommendations, if employed, should be made a part of the detailed instructions to bidders:

1. A formal bidders conference be held at least forty-five (45) days prior to the bid opening. A second formal conference should be scheduled at least thirty (30) days before bid opening in large procurements where indicated.
2. Bidders are requested to submit all questions in writing at least five (5) working days prior to the bidder's conference.
3. Answers to all questions of a nature material to the specifications (whether the questions are submitted verbally or in writing) will be sent to all bidders in the form of written addenda at least fourteen (14) days prior to the bid opening. All questions will be answered if possible without deferring to a later evaluation.
4. No bidder communication will be accepted within fourteen (14) days of the bid opening date except for formal requests by the bidders for extensions of the bid opening date.

As previously discussed, the Engineer has utmost concern with establishing the availability of equipment responsive to

the specifications being drawn. Requests for variations and exceptions by bidders are often clouded by cost and other competitive factors. One method of maintaining the integrity of the specifications is to determine the practicality of bidding. It is recommended that the following instruction be employed for mandatory use by bidders on all inquiries related to variations and exceptions:

5. Notwithstanding the fact that this bidder has the privilege of electing any course of action in the future, this bidder herewith certifies that he cannot (strike one) submit a bid which is compliant with Specification Paragraph # _____ (fill in) if above variation or exception to the specification is not granted.

It may also be appropriate to consider the utilization of a two-step procurement. This recommendation is made for examination of the use of two-step procurement rather than being a direct recommendation for its adoption. This is based upon the fact that the present procurement practices are achieving highly acceptable results along with a certain degree of problems. It is very important to weigh any changes and consider any additional problems which may be incurred.

The two-step procurement would involve as a first phase publishing the specifications for comments by the vendors. The comments then can be integrated into a completed document which has a much greater assurance of being bid without exceptions or variations. Note that this does not prevent the bid alternatives which the vendor may choose.

Both the two-step procurement technique and the formal addenda technique previously discussed tend to assure that all bidders can submit a compliant bid. The employment of these techniques could enable the contract documents to call for the submission of a compliant bid. If this policy is adopted then it is recommended that the following contract statement be made part of the bid:

6. Contractor's Statement: The bidder herewith certifies that this bid is in compliance with the material, equipment, and specifications of the contract documents and that it is submitted without any exception expressed or implied.

7. It is this Consultant's opinion that compliance should be based on the equipment specifications, given that an award is made contingent on the contractor accepting any procedural requirement of the COG.

If it is the formal policy that the COG award a contract to the compliant bidder that is lowest in price, then that policy should be formally stated. In order that the bidders may be fully cognizant and appreciate the bid award policy, then it is recommended that the award policy be stated in the contract documents and that the following be made part of the special conditions:

8. The COG shall be the sole judge of compliance or when a vendor is compliant.

9. The compliant bidder will be favored with an award over any other bidder's advantage.

10. An award will be made to the vendor submitting the compliant bid that is lowest in price.

11. The COG, when it is in its best interest, may select alternatives and/or negotiate with the vendor who has been previously selected on the aforementioned basis of compliant bid that is low. However, the COG will not accept or negotiate with said bidder such that the final contract cost exceeds the cost bid by any other compliant bidder.

It is suggested that the Council consider the option of negotiation for compliance when the cost differential between the low bidder and the possible award exceeds some amount, for example, 10% and when the specifications in question do not affect the cost differential. For example, a bidder may be 10% low based upon lower prices on many items. This bidder is also noncompliant in an item representing only ½% of the total bid. In this case, the COG would negotiate with such a vendor which

may lead to an award based upon the price differential and negotiated compliance. This is admittedly an extremely difficult area to treat and may not be required if other recommendations are adopted.

It is the Consultant's opinion that the basic procurement policy of the Council is sound. The recommendations stated herein are meant to foster a more effective implementation of these basic policies and to diminish problems which are natural to a competitive bid environment.

END

7 1/2