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Johnson
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DECISION



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

FILE: B-191262

DATE: April 27, 1978

MATTER OF: Johnson Controls, Inc.

DIGEST:

No objection is taken to contracting officer's affirmative determination of responsibility. Record shows bidder submitted evidence of some work fulfilling, among other things, 2-year experience requirement. Where IFB does not require showing that prospective contractor has particular level of prior experience, quality or similarity of such experience is matter of judgment reserved to contracting officer in determining bidder's responsibility which GAO has declined to review in absence of fraud.

On November 1, 1977, the United States Army Engineer District, Fort Worth District, Corps of Engineers (Army), issued invitation for bids (IFB) DACA 63-77-B-0139 for the installation of an energy control and computer monitoring system (ECMS) for heating and air-conditioning units at Kelly Air Force Base, San Antonio, Texas.

Bids were received in response to the IFB from Computer Sciences Corporation (CSC) and Johnson Controls, Inc. (Johnson), among others. CSC was awarded the contract on March 21, 1978, in the face of this protest by Johnson.

The contracting officer completed a preaward survey of CSC on February 10, 1978. The survey concluded that CSC was responsible and capable of satisfactory performance under the contract. That affirmative determination of responsibility has been protested to our Office by Johnson.

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Regarding protests against a contracting officer's affirmative determination of a bidder's responsibility, our Office has held that we will not review such matters except where there are allegations that the contracting officer's actions in finding a bidder responsible are tantamount to fraud or the solicitation contains specific and objective responsibility criteria which allegedly have not been met. Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, aff'd. 54 Comp. Gen. 715 (1975), 75-1 CPD 138. This policy was adopted by our Office because, normally, responsibility determinations are based in large measure on the general business judgment of the contracting officer and, being subjective, are not readily susceptible to reasoned review. Central Metal Products, Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64.

Johnson contends that CSC did not satisfy the IFB's specific and objective responsibility criterion demanding that each bidder have a specified amount of experience in the operation of certain control systems similar to that contracted for in the solicitation. Johnson further contends that, under the Yardney and Data Test cases, our Office can and should review the case to ascertain whether CSC did, in fact, satisfy such criteria. The Army and CSC take the position that the awardee satisfied all the requirements of responsibility as based on the reasonable examination by the contracting officer.

Therefore, the questions presented by the protest are whether the IFB contained definitive criteria of responsibility and, if so, whether there was a reasonable basis for concluding that the awardee met those criteria.

The IFB provision in question reads as follows:

"Contractor Qualifications: The contractor shall have a successful history in the design and installation of solid-state, central processor controlled systems similar in performance to that specified herein and shall have a successful working system in operation for at least two years using CRT [cathode ray tubes] and software routines functionally similar to those outlined in these specifications. Previous systems

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in operation are not required to have software routines 'field programmable' but must meet all other criteria to be technically qualified. The Contractor shall provide a listing of installations."

Another IFB provision entitled, "Evaluation of Bids," states that evidence of the aforementioned qualification, among others, must be met in order for the contracting officer to make an award to a prospective bidder.

The IFB's contractor qualification provision requires two types of experience. The first does not require that a prospective contractor have a particular level of experience in order to be considered for award. It merely requires that the contractor, by providing a list of installations, show a history of performing work "similar" to that specified. Since it is clear that "similar" is not the same thing as "identical," the extent to which the claimed "similar" experience is sufficiently related to the IFB-required work to indicate the likelihood that the offeror could perform in accordance with contractual requirements must be left largely to the sound discretion and subjective judgment of the contracting officer. Thus, the first experience requirement can be regarded as an objective responsibility criterion only to the extent that it requires a showing of some experience. The interpretation of data to decide what constitutes "successful history" or "similar in performance" is one of subjective judgment which essentially turns on the general business judgment of the contracting officer. See Mosler Airmatic Systems Division, B-187586, January 21, 1977, 77-1 CPD 42.

It appears from the record that CSC has submitted evidence to the contracting officer of some experience in the design and installation of solid-state, central processor controlled systems. However, the quality and requisite similarity of that experience is a matter of judgment reserved to the contracting officer in determining the offeror's responsibility. It is this type of subjective judgment leading to an affirmative determination of responsibility which GAO has declined to review in the absence of fraud, which has not been alleged. Yardney Electric Corporation, supra.

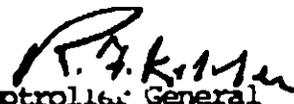
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The second experience requirement states that a prospective contractor have a successful working system in operation for at least 2 years. This system must use CRT and software routines similar to those outlined in the specifications. As indicated by our earlier discussion, this Office will not review a contracting officer's determination concerning the quality or similarity of work performed to that contracted for. Such matters are properly for the contracting officer as being within his discretion or business judgment and will not be reviewed by our Office where, as here, no fraud has been alleged.

However, we note the inclusion of a 2-year requirement for the operation of such a system. Protester relies on this provision to support his argument that CSC has not fulfilled the definitive criteria in the IFB. A close reading of the provision reveals that there need not be a system similar to that outlined in the specifications in operation for 2 years; rather, that a system in operation for 2 years use CRT and software routines that are functionally similar to those outlined in the specifications.

CSC and the contracting officer have submitted evidence indicating that CSC has had several systems in operation for 2 years that do use CRT and software routines. We note the Black Powder Process Central System at Charlestown, Indiana, the Continuous Automated Single Base Propellant Line at Ratford, Virginia, and the Laboratory Information System at Richmond, Virginia, as examples. Therefore, we will not object to the contracting officer's affirmative determination since the record shows the submission of evidence of work fulfilling the 2-year experience requirement.

For the reasons stated above, we find that the contracting officer's affirmative determination of responsibility was not improper. Accordingly, the protest is denied.


Deputy Comptroller General
of the United States