

DECISION



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

FILE: B-194066

DATE: October 18, 1979

MATTER OF: United States Crane Certification Bureau, Inc. *CNG-01495*

DIGEST:

AGC 004940
Provision requiring accreditation of successful bidder to perform certification of cranes listed in IFB in accordance with Occupational Safety and Health Administration (OSHA) standards, may be misleading since it appears doubtful that OSHA standards apply to those cranes. However, agency could impose accreditation requirement as definitive responsibility criterion if reasonable relationship exists between OSHA accreditation and work required by contract, and in any event award to low bidder need not be disturbed since protester has not been prejudiced and it is doubtful that misleading provisions prevented any potential contractor from bidding.

CNG 01495
United States Crane Certification Bureau, Inc. (U.S. Crane), protests an alleged solicitation defect in invitation for bids (IFB) N62472-79-B-4551, issued by the Naval Facilities Engineering Command, Department of the Navy, for the preventive maintenance, inspection, load testing and certification of cranes at the Philadelphia Naval Shipyard (Shipyard), Philadelphia, Pennsylvania. *DLG-02360* *AGC 00641*

After unsuccessfully attempting to extend the prior contract, the Navy determined that the crane maintenance services were urgently required and made award to the lowest bidder, Reading Crane and Engineering Company (Reading). U.S. Crane was the second lowest bidder at \$210,775, which exceeds the award price by approximately \$48,000. *DLG-02716*

The alleged defect is the inclusion of the following requirement in section 00005-1 of the IFB:

[Protest INVOLVING ALLEGED
Solicitation DEFECT]

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"1.1 Certification. Prior to award of contract, the successful bidder shall submit written certification of the following qualifications to the OICC for his review, approval and retention within the contract files maintained at the Philadelphia Naval Shipyard, Code 424.

"1.1.1 Contractor Accreditation. The successful bidder shall possess a current accreditation from the U.S. Department of Labor authorizing him to perform all prescribed inspections, tests and certifications for all equipment as required in this contract for the entire contract term. During the term of the contract all required forms, such as inspection forms, certification forms and Shop Repair Orders, shall be signed by the accredited Department of Labor Inspector.

"NOTE: Loss of U.S. Department of Labor accreditation during the term of the contract will result in termination of the contract."

The Navy explains that the "Contractor Accreditation" clause requires an accreditation by the Occupational Safety and Health Administration (OSHA), Department of Labor, in accordance with 29 C.F.R. Part 1919 (1978). The purpose of the requirement is to ensure that fully trained, qualified and competent personnel are used to perform maintenance, inspection and certification of weight handling equipment. U.S. Crane contends that C.F.R. Part 1919 does not apply to the cranes involved in this procurement.

29 C.F.R. Part 1919 provides procedures and standards governing the accreditation by OSHA of persons to certify vessels' cargo gear and shore-based material handling devices. However, the OSHA regulations do not require certification of all cranes by a person accredited

pursuant to Part 1919, and do not provide for accreditation of persons who inspect types of cranes not covered by the regulations. See 29 C.F.R. Parts 1915-9. There are safety standards for other cranes, but no requirement for certification. See 29 C.F.R. § 1910.179.

The cranes covered by the solicitation all appear to be shore-based, located within Shipyard buildings, and used to transport heavy item material within those buildings. None of the OSHA regulations referred to by the Navy seems to encompass such cranes. Consequently, we believe the solicitation may have been misleading in referring to accreditation authorizing the bidder "to perform * * * inspections, tests and certifications for all equipment as required in this contract * * *, "since we think it unlikely that such accreditation is available from OSHA. We are suggesting to the Secretary of the Navy that this matter be clarified with OSHA prior to the issuance of other IFBs containing such language.

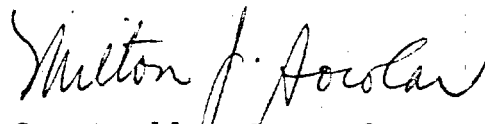
We recognize, however, that possession of the accreditation provided for in 29 C.F.R. Part 1919 might well be necessary for the Navy to reasonably assure itself of a bidder's competency to perform the work covered by the contract even though the accreditation is not an OSHA requirement for the cranes involved. Consequently, while the OSHA accreditation technically may not be a prerequisite for a firm to be "authorized" to work on these cranes as implied by the solicitation, the Navy nonetheless could impose the accreditation requirement as a definitive criterion of bidder responsibility, assuming, of course, that there is a reasonable relationship between the accreditation provided by OSHA and the work required by this contract.

In any event, while the certification provisions of the IFB may have been misleading, we find no basis for disturbing the contract. Award was made to the low bidder, and we fail to see how the protester's competitive position was adversely affected by the complained of IFB provision. Moreover, in view of the nature of the possible defect in that provision, we doubt that it kept other potential contractors from bidding anymore

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than it kept the protester from submitting a bid. As indicated, we are, however, bringing this matter to the attention of the Secretary of the Navy.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States