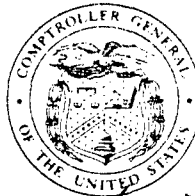


Martin

PL II

DECISION



15482
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

[Protest Alleging Solicitation Is Unduly Restrictive of Competition]

FILE: B-199757

DATE: November 19, 1980

MATTER OF: Security Assistance Forces & Equipment
International

DIGEST:

1. Where protester is parent company of wholly owned subsidiary which submitted proposal, protester is "interested party" within meaning of Bid Protest Procedures especially where president, if not owner, of both companies is same individual.
2. Where specification for protective system for arms rooms required cable to be installed in conduits for additional security, protester's contention that conduit required is contrary to universal practice, excessively expensive and unduly restrictive of competition is denied since GAO will not question technical judgment forming basis for determination of minimum needs unless it is clearly shown to be unreasonable.

(Security Assistance Forces & Equipment International, Inc., (SAFE International) protests as restrictive of competition a specification in solicitation No. DAJA37-80-R-0426 issued by the U.S. Army Contracting Agency, Europe for the installation of intrusion detection systems. SAFE International contends the requirement that all necessary cable other than overhead lines be installed in conduits is contrary to universal practice, excessively expensive and unduly restricts competition.) For reasons discussed below, this protest is denied.

~~013009~~ 113800

Although SAFE International is the protester, its subsidiary S.A.F.E. Export Corporation (SAFE Export) submitted the offer with prices for cable installed in conduits and prices for cable installed without conduits. Therefore, as the protester did not submit an offer, the Army contends SAFE International is not an interested party within the meaning of our Bid Protest Procedures, 4 C.F.R. § 20.1(a) (1980) and cites Die Mesh Corporation, 58 Comp. Gen. 11 (1978), 78-2 CPD 374 to support this contention. However, the procurement in the Die Mesh case concerned a subcontract from a prime contractor with the Government and the protester submitted neither an offer nor a timely protest. We held that the direct and substantial economic interests at stake were not those of the protester but those of offerors who participated in the procurement and did not receive awards. Here, SAFE International submitted a timely protest and its subsidiary submitted an offer with a covering letter indicating that its contract administration would be handled by SAFE International. It also appears that the president, if not the owner, of both the parent and its wholly owned subsidiary corporation is the same individual. Thus, it appears that the economic interests of each corporation in the other is more direct and substantial than that which existed in the Die Mesh case.

It is well established that the submission of a bid or offer is not necessarily required in order for a protester to qualify as an interested party and that, where a protester has not submitted a bid or offer, its status as an interested party depends upon the nature of the issues raised and the direct and indirect benefit or relief sought. American Satellite Corporation, B-189551, April 17, 1978, 78-1 CPD 289. Our decisions indicate that nonofferors such as subcontractors, labor organizations and industrial associations may be considered as interested parties where there is a possibility that recognizable established interests will be inadequately protected if our protest forum is restricted solely to offerors and bidders. See Cardion Electronics, B-193752, July 8, 1979, 79-1 CPD 406 and Die Mesh Corporation, supra and the cases cited therein.

When the guidelines established by the above cited cases are applied to circumstances existing here, we believe that SAFE International as the parent company of SAFE Export is clearly an interested party for purposes of this protest.

The Army contends the security of the facilities, which include arms rooms, requires that the cable be installed in conduits because such installation enhances the reliability of the system by reducing the chances of tampering and deliberate or accidental damage. The Army further contends that the estimated additional cost of such installation when spread over the forecasted 25-year useful life of the system amounts to about \$800 per year minus the savings which may result from reduced maintenance problems. Five offers were received and the Army considers the price of the low offeror, which although slightly higher than SAFE Export's price for installation without conduits is considerably below its price for installation with conduits, to be fair and reasonable.

Contracting agencies are primarily responsible for determination of their minimum needs and the methods of accommodating them. Manufacturing Data Systems, Incorporated, B-180608, June 28, 1974, 74-1 CPD 348. They are in the best position to draft appropriate specifications since they are most familiar with their requirements and the environment in which the products being procured will be used. Therefore, our Office will not question an agency's determination of its minimum needs, or the technical judgment forming the basis for that determination, unless it is clearly shown to be unreasonable. Tyco, B-194763, B-195072, August 16, 1979, 79-2 CPD 26. Once an agency, as here, has established an apparently sufficient and rational basis supporting the specification which a protester challenges, the burden of proof lies with the protester to show that the Government's insistence upon them is clearly unreasonable. Alan Scott Industries, B-193530, April 27, 1979, 79-1 CPD 294.

We think SAFE International has failed to meet its burden. We are not impressed by its statement that it is not aware of any other Government agency which requires the cable for intrusion detection systems to be installed in conduits. Even if we accept that no other agencies

insist on such installation, it proves nothing. Agency needs differ and technical judgments with respect to the same needs can reasonably differ. SAFE International's statement that the requirement conflicts with the "Army Manual" is countered by the Army pointing out that Army Regulation 190-11, March 30, 1977, encourages additional levels of protection where practical for the physical security of weapons, ammunition and explosives. This regulation in paragraph 1-2 states it is impractical to prescribe definitive physical security standards since the degree and the nature of the threat to these "lethal assets" are contingent upon many variables. It therefore emphasizes that this regulation establishes minimum standards. Under these circumstances, we cannot conclude that the extra measure of caution provided by the conduit requirement is unreasonable.

(SAFE International's initial and timely protest concerned only the conduit requirement. Although it has discussed other issues since the closing date for receipt of initial proposals, it concedes the primary thrust of this protest is still directed at the conduit. We therefore see no useful purpose to be served in discussing the additional issues here. Moreover, the additional issues appear to be untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2 (1980), or have been presented by SAFE companies in other protests some of which are awaiting decision in this Office.

Harry R. Van Cleave

For the Comptroller General
of the United States