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DECISION



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

FILE: B-204557 DATE: September 21, 1981

MATTER OF: Nedlog Company

DIGEST:

1. Contracting agency properly determined low bid to be responsive since it was an unqualified offer to perform the exact thing called for in the invitation.
2. GAO no longer reviews a contracting agency's affirmative determination of responsibility except for reasons not present here.
3. Whether awardee fulfills its contractual obligations by furnishing items that comply with the specifications is a matter for the contracting agency in the administration of contract and does not affect the validity of the award.
4. Contracting agency was not required to conduct an in-depth investigation of the awardee's proposed items once the awardee's bid was determined to be responsive and the awardee itself was found to be responsible. After notifying the protester of its findings, the agency was free to proceed with the award.

The Nedlog Company (Nedlog) protests the award of a contract to Dispensing Systems of Georgia (DSG) under invitation for bids (IFB) No. DABT47-81-B-0218, issued by the Department of the Army (Army), Fort Jackson, South Carolina.

The IFB solicited bids for noncarbonated fruit drink beverages and dispensing equipment. Nedlog argues that DSG's bid is nonresponsive because neither the drinks nor the dispensing equipment DSG proposed to supply meets the IFB's specifications. Nedlog further argues that the contracting officer was required, in effect, to test DSG's products for

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compliance with the specifications, utilizing available experts such as the post food service and a pre-award survey team. Finally, Nedlog criticizes the haste in which the Army denied its initial protest; it believes that this reflects the lack of any real evaluation of the DSG bid.

We conclude, however, that Nedlog's protest is without merit.

The test to be applied in determining the responsiveness of a bid is "whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof." 49 Comp. Gen. 553, 556 (1970).

As part of its submission to our Office, Nedlog included the letter from the contracting officer which denied Nedlog's initial protest to the agency. This letter states that DSG had submitted an unqualified bid which the contracting officer found to be a clear indication that DSG intended to comply with all the IFB's requirements. The letter further states that, once performance began, DSG would be required to provide beverages and equipment consistent with the specifications.

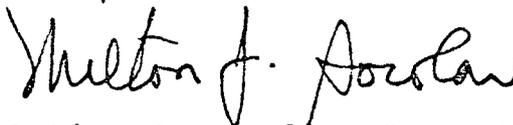
In light of the contracting officer's statement, we find no basis to conclude that DSG's bid is non-responsive. As indicated above, a bid is responsive if it is an offer to do the exact thing called for in the invitation. DSG's bid makes such an offer, and thus DSG is legally bound to furnish beverages and equipment which comply with the specifications. The contracting officer was under no obligation to have DSG's beverages and equipment tested during the evaluation process since, from the face of its bid, DSG made an unqualified offer of compliance and can be legally held to that offer.

Insofar as Nedlog is arguing that DSG is not a responsible bidder and will not or cannot comply with the specifications, we note that the contracting officer has made an affirmative determination that

DSG is a responsible bidder. Our Office no longer reviews such determinations unless, unlike here, either fraud is shown on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Aerosonic Corporation, B-193469, January 19, 1979, 79-1 CPD 35. We also note that whether DSG fulfills its contract obligations by furnishing beverages and equipment that comply with the specifications is a matter for the contracting agency in the administration of the contract and does not affect the validity of the award. Impact Instrumentation, Inc., B-198704, July 28, 1980, 80-2 CPD 75.

Finally, we find nothing improper with the speed in which the Army denied Nedlog's protest and awarded the contract. According to Nedlog, it was only 8 days from the time the Nedlog protest was filed to the time the Army issued its denial. Nedlog believes this reflects a rather superficial review of its protest. However, we have already indicated that once the Army found that DSG's low bid was unqualified and that DSG itself was a responsible bidder, no further investigation was required. At that point, the Army's only obligation was to explain these findings to Nedlog, which it did. After that, the Army was free to proceed with the award.

Protest denied.



Acting Comptroller General
of the United States