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**DECISION**



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

**FILE:** B-209263

**DATE:** June 7, 1983

**MATTER OF:** Accent General, Inc.

**DIGEST:**

1. Specification requiring contractor experience is a performance requirement where; (a) neither specification nor rest of the solicitation requires data showing experience to be submitted before award; (b) experience is required only for part of the work to be performed under the contract; and (c) requirement is listed in specification covering the contract's performance requirements.
2. Protest alleging noncompliance with a performance requirement is directed toward a matter of contract administration and is not reviewable under GAO Bid Protest Procedures.
3. The legality of a contract award is not affected even if the contracting officer erroneously decided to award the contract while a protest is pending.

Accent General, Inc. (Accent), protests the award of a contract for the repair of fuel storage tunnels to Abhe & Svoboda, Inc. (Abhe), under Department of the Navy (Navy) invitation for bids (IFB) No. 62475-82-B-5118.

Accent, the third low bidder, alleges that neither Abhe, the low bidder, nor Anchor Tank Lining, the second low bidder, meets the experience requirements stated in the solicitation. Accent also protests the Navy's decision to award the contract while the protest was pending.

For the following reasons, the protest is dismissed.

The solicitation contained Navy specification No. 33-81-5118, covering the work, which included section 01012, as follows:

"1. QUALIFICATION OF CONTRACTORS: In order to be considered for the performance of work included in this contract, a contractor must be qualified as specified hereinafter. A contractor will be considered qualified only if he possesses the experience set forth below. The contractor shall submit data to the contracting officer for approval, which will show that the contractor has successfully applied the specified lining system on concrete tanks, as specified on at least two projects for the United States Government within the last five years. The data shall include the names and locations and dates of the projects which have been performed."

Accent alleges that the contracting officer improperly found that Abhe complied with this provision prior to award. We disagree.

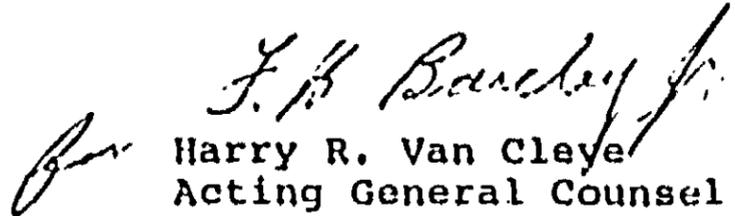
Nothing in the specification or the rest of the solicitation required bidders to submit data demonstrating experience before contract award. See Watch Security, Inc., B-209149, October 20, 1982, 82-2 CPD 353; King Fisher Company, B-205003, June 16, 1982, 82-1 CPD 592. In addition, lining the tanks was only a portion of the work which had to be performed under the contract. See Pacific Horizons Incorporated, B-204888, July 8, 1982, 82-2 CPD 32. Further, section 01012 is contained in the specifications covering the contract performance requirements rather than in the section concerning evaluation of the bidder or bid for award. See E. C. Campbell, Inc., B-204253, February 2, 1982, 82-1 CPD 76; Caelter Industries, Inc., B-203418, March 22, 1982, 82-1 CPD 265.

In conclusion, we find that Accent's protest alleges that Abhe will not comply with a performance requirement and it is directed toward an aspect of contract administration. Since questions of contract administration are the responsibility of the contracting officer, we will not review this matter on the merits. See Pacific Horizons Incorporated, supra.; Welch Allyn, B-206193.2, March 2, 1982, 82-1 CPD 187.

Because of our conclusion, it is not necessary to address Accent's claim that the Navy should not have awarded the contract while the protest was pending. However, we note that the legality of a contract award is not affected even if a contracting officer erroneously decided to make an

award during the pendency of a protest, McQuiston Associates, B-199013, September 1, 1981, 81-2 CPD 192. Also, because of our conclusion, it is not necessary to consider the protest against the second low bidder.

Protest dismissed.

  
Harry R. Van Cleye  
Acting General Counsel