

DECISION



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

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FILE: B-212356

DATE: November 15, 1983

MATTER OF: Ampex Corporation

DIGEST:

Protest that awardee did not meet solicitation provision that required submission of references of clients who currently operated offeror's equipment in a dual or triple processor environment is sustained since awardee provided only two references and neither reference met the solicitation requirement.

Ampex Corporation protests the award of a contract to Systems Concepts, Inc., under request for proposals (RFP) DCX0H-83-015 issued by the Administrative Office of the United States Courts for the memory upgrade and replacement of the DecSystem 10 at the Administrative Office, Washington, D.C.

The solicitation in Attachment V - Responsive Proposals required that:

"7. The proposal must provide references (organizations, names and telephone numbers) of clients who currently operate their hardware on DecSystem 10's in a dual or triple processor environment."

Ampex contends that Systems Concepts' proposal should be rejected because the proposal failed to list two facilities that were actually operating Systems Concepts' hardware in the required processor environment. Ampex argues that although Systems Concepts did provide two references, the agency did not verify the accuracy of Systems Concepts' claims and that verification by the agency would show that Systems Concepts did not meet the requirement in this case.

We sustain the protest.

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Our decisions recognize a distinction between solicitation requirements relating to an offeror's capability and experience and those which are concerned with the history of the product's performance and reliability. American Sterilizer Company, B-207518, November 17, 1982, 82-2 CPD 453. An offeror's experience is a matter of responsibility and the history of a product is a matter of responsiveness. E.C. Campbell, Inc., B-203581, October 9, 1981, 81-2 CPD 295. Here, although the clause is worded in terms of responsiveness, the agency, in its report, indicates that it actually constitutes a responsibility criterion since it relates to the experience of the offeror and its prior installations.

While normally we will not review an affirmative responsibility determination, we do so when the protester shows fraud on the part of the procuring officials or, as is alleged in this protest, the solicitation contains definitive responsibility criteria which allegedly have been misapplied. Gaffny Plumbing Heating Corporation, B-206006, June 2, 1982, 82-1 CPD 521.

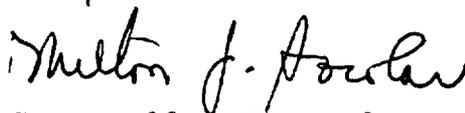
Definitive responsibility criteria are specific and objective standards established by an agency for a particular procurement for the measurement of an offeror's ability to perform the contract. These special standards of responsibility limit the class of offerors to those meeting specified qualitative and quantitative qualifications necessary for adequate contract performance, such as specific experience requirements. A.R. & S. Enterprises, Inc., B-201924, July 7, 1981, 81-2 CPD 14. We find the requirement in the present case constitutes a definitive responsibility criterion.

However, the scope of our review is limited to ascertaining whether evidence of compliance has been submitted from which the contracting officer could reasonably conclude that the definitive responsibility criteria had been met. E.J. Nachtwey, B-209562, January 31, 1983, 83-1 CPD 104. The sufficiency of the evidence is a matter reserved to the subjective judgment of the contracting agency. American Sterilizer Company, supra.

The agency indicates that Systems Concepts submitted a list which fully meets the solicitation requirement that the proposal provide references of clients who currently operate their hardware on DecSystem 10's in a dual or triple processor environment. The agency argues that the contracting officer could reasonably conclude from this submission that Systems Concepts had met the solicitation requirement.

Our review of the record indicates that Systems Concepts submitted two references: Goodyear Atomic Corporation and the University of Southern California. With respect to the University of Southern California, Systems Concepts' proposal clearly indicates that it operates a single processor system at that installation. Furthermore, the protester alleges, and the agency has not refuted the allegation, that the Goodyear system has not been installed and is 9 months delinquent in installation. In order to satisfy the requirement, the equipment must have been operated in a dual or triple processor environment. Consequently, neither reference satisfied the solicitation requirement. Therefore, the contracting officer had no basis to conclude that Systems Concepts met the requirement. Accordingly, we sustain the protest.

By letter of today, we are recommending that the Administrative Office consider the feasibility of terminating the contract for the convenience of the government.



Acting Comptroller General
of the United States