

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

28457

FILE: B-213556**DATE: June 6, 1984****MATTER OF: Karl Doll GmbH****DIGEST:**

Where a solicitation contains special standards of responsibility, including a 2-year experience requirement for certain workers, an offeror's failure to demonstrate its ability to satisfy the criteria is a proper basis for its rejection as nonresponsible.

Karl Doll GmbH protests the rejection of its proposal and the award of contracts to other offerors under request for proposals (RFP) No. DAJA37-83-R-0402, issued by the Department of the Army for boiler firing services at 19 Army communities in West Germany. Doll was the low offeror on 4 of the 19 areas, but was denied the awards based on the Army's determination that it was not a responsible, prospective contractor. We deny the protest in part and dismiss it in part.

The solicitation contemplated the award of firm fixed-price contracts on either a single area or on an all or none basis and for either 12 or 36 months (under multi-year contracting authority), whichever would result in the lowest cost to the government. The solicitation contained several provisions relating to offeror responsibility. Section H-5, entitled "BASIC RESPONSIBILITY AND QUALIFICATIONS," required that boiler-firemen have at least 2 years of experience, and that these workers be supervised by an authorized superintendent master or engineer. It also reserved to the government the right to require the successful offeror to submit--prior to or during performance--evidence of personnel qualifications. Section H-6, entitled "SPECIAL STANDARDS OF RESPONSIBILITY," set forth the following additional requirements:

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"All maintenance and repair work shall be performed by professional workers authorized to perform the work by professional qualification certified by the professional license or certificate issued in accordance with the requirements of the German Handicraft Law (Handwerksordnung) as applicable to the specified work."

"All supervision and superintendence of all maintenance and repair work shall be executed by supervisors and superintendents authorized to execute supervision and who are physically available to execute the required supervision and furnish instructions as professional supervisors (Masters or Engineers) holding the appropriate qualification license issued in accordance with the requirements of the German Handicraft Law (Handwerksordnung) as applicable to the specified work."

Doll's proposal offered the lowest price for three areas--Berchtesgarden, Hanau and Heidelberg--and also became the low offer for Augsburg where the low offeror was rejected as nonresponsible. A preaward survey conducted August 2, 1983, however, found Doll not technically capable of performing based in part on Doll's failure to establish that it had or could obtain necessary licenses and qualified personnel in accordance with RFP section H. Specifically, Doll reportedly declined to upgrade its handicraft license so it could operate coal fired boilers (in addition to oil fired boilers, which were covered by its license). The record also shows Doll refused, or was unable, to present evidence that the work would be performed by boilerfiremen with 2 years of experience, that other workers would possess the requisite handicraft licenses, and that the work would be supervised by individuals who were authorized Masters or Engineers.

The Army states it afforded Doll one final chance, on September 15, to provide the necessary licenses and evidence (such as letters of intent) that qualified personnel would perform the contract, but that Doll refused to furnish this documentation, stating that its current capacity would prevent it from beginning performance on the October 1 starting date of the contract. As a result of Doll's failure to establish that it had, or could obtain, the

necessary licenses and qualified personnel without delaying or disrupting performance, the contracting officer determined Doll to be nonresponsible and awarded contracts for the four areas to other offerors.

Doll maintains it is fully capable of performing in accordance with the RFP, and that the Army erroneously found it nonresponsible. Doll states that although its owner does not have a license for coal fired boilers, one of its master craftsmen does have the required license; it has submitted a copy of this license to our Office. Doll also argues that it should not have been required to submit proof of qualified personnel since, to meet such a requirement, it in effect would have had to enter employment contracts prior to receiving the award. Doll indicates it would have no difficulty hiring qualified personnel since, it alleges, the personnel at a site ordinarily remain when a new contract is awarded and are hired by the new contractor.

The Army's position is, simply, that Doll failed to satisfy the special standards of responsibility and thus was properly rejected as nonresponsible. The Army explains that it included special responsibility standards in the RFP to ensure acceptable performance; under prior contracts, inexperienced contractor personnel reportedly damaged boilers by using improper maintenance and operation procedures.

The special standards in section H were specific-- boiler-firemen were to have at least 2 years of experience; workers were to possess German Handicraft Law licenses; and supervisors were to be authorized Masters or Engineers. In view of these provisions, we think it is clear that an offeror, upon request, had to demonstrate an ability to meet these requirements as a prerequisite to being found responsible.

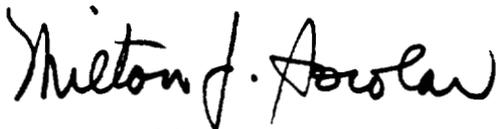
The Army states, and Doll does not deny, that Doll was unwilling or unable to furnish any evidence that it would be able to employ personnel with the required experience, licenses and degrees, and that the contract would be performed by such personnel. Thus, even if we assume that Doll was licensed to operate coal fired boilers, we must conclude that Doll failed to satisfy the responsibility criteria in RFP section H, and that it was properly found not responsible. Doll argues that it was in the same position as every other offeror with respect to employing

qualified personnel. The record contains no evidence, however, that other offerors failed to submit some evidence that qualified personnel would perform the contract.

We do not agree with Doll that it was somehow objectionable for the Army to require evidence, before award, that qualified personnel could and would be employed. The Army had experienced difficulties under prior contracts due to the employ of underqualified personnel and we do not think it was unreasonable to include special responsibility standards in the RFP to avoid similar problems under these contracts. The record indicates that this requirement could have been satisfied by submission of mere letters of intent rather than employment contracts as Doll suggests would have been necessary.

Doll protests any future determinations that it is non-responsible to perform in the areas for which contracts have not yet been awarded. As there is no indication that Doll has been rejected as nonresponsible for other areas on which it was the low offeror, this allegation is premature and will not be considered. See, e.g., TECOM Incorporated, B-212975, Oct. 3, 1983, 83-2 CPD ¶ 409.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States