



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Electronic Systems, USA
File: B-224472
Date: October 8, 1986

DIGEST

1. Solicitation provision that bidder must have produced similar equipment and materials for a period of at least 2 years must be met as a condition of award; determination of the similarity of the equipment, however, is essentially within the discretion of the contracting agency.
2. Although solicitation identified protester's system as the standard for bidding purposes and indicated that equal or better products could be supplied provided all relevant information was submitted to the contracting officer for approval, awardee was not required to provide any descriptive information with its bid demonstrating how its product would meet the IFB requirements since "Brand Name or Equal" clause was omitted from the solicitation and by signing the bid, awardee has agreed to provide the items in accordance with the specifications.
3. Allegation that awardee's equipment will not conform to contract requirements is a matter of contract administration which is the responsibility of the procuring agency not our Office.

DECISION

Electronic Systems, USA (ESUSA), protests the award of a contract to Energy Maintenance Engineering, Inc. (EME), under invitation for bids (IFB) No. F33601-86-B0031 issued by the Department of the Air Force for the installation of an automation control system which monitors and controls heating, ventilation and air conditioning. The IFB also called for the installation of an uninterruptible power supply system. ESUSA alleges that EME does not meet the IFB's definitive responsibility criteria. In addition, ESUSA alleges that EME is unable to deliver equipment which will comply with the IFB requirements.

We deny the protest.

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The IFB requires the contractor to install an automation control system to replace the existing Honeywell 2000/2500 central processor. The IFB identified ESUSA's system as a standard for bidding purposes and indicated that equal or better products could be supplied provided the contractor submitted all relevant product information to the contracting officer for approval. In addition, the IFB indicated at paragraph 18(f) that:

"3. Manufacturers shall have produced similar equipment and material for a period of at least 2 years.

4. Similar installations using manufacturers equipment and material shall exist. Installations shall be rendering satisfactory service."

ESUSA contends that these two paragraphs constitute definitive responsibility criteria which require bidders to demonstrate that they have produced equipment completely compatible with the existing Honeywell 2000/2500 systems for 2 years, to have installed this equipment and to show that this equipment is operating satisfactorily. ESUSA alleges that EME cannot meet this requirement since only ESUSA and Honeywell have produced equipment completely compatible with the Air Force's existing system.

In addition, ESUSA alleges that EME does not have the ability or capacity to perform the contract. ESUSA argues that EME's current equipment is not fully compatible with the Honeywell 2000/2500 system and that EME does not produce an automation control system that is U.L. listed as required by the IFB. ESUSA argues that EME is not a responsible contractor and that the contract should be awarded ESUSA, as the lowest responsive, responsible bidder.

The Air Force contends that there is nothing in the IFB which required bidders to have installed the identical equipment offered, only that similar equipment have been produced. The Air Force states that EME provided several references which showed that it had supplied such systems in the past and that EME was properly found responsible. Concerning the responsiveness of the bid, the Air Force states that EME did not take any exception to the IFB requirements and unequivocally offered to provide equipment conforming to the specifications. The Air Force argues that since EME's bid was responsive and because the firm was found responsible, it was required to award the contract to EME.

Definitive responsibility criteria are specific and objective standards established by an agency for a particular procurement for the measurement of a bidder's ability to perform the contract. These special standards limit the class of bidders to those meeting specified qualitative and quantitative qualifications necessary for contract performance as a precondition of award. Watch Security, Inc., B-209149, Oct. 20, 1982, 82-2 CPD ¶ 353.

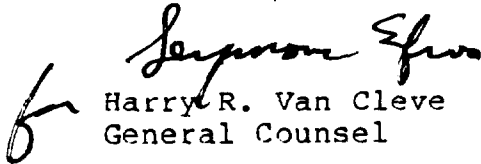
In our view, the provision which required bidders to have installed similar equipment for a specific time period constitutes a definitive criteria. See J.A. Jones Construction, Co., B-219632, Dec. 9, 1985, 85-2 CPD ¶ 637. However, we point out that the determination of what constitutes similar equipment is left to the discretion and business judgment of the contracting officer. Mosler Airmatic Systems, Div., B-187586, Jan. 21, 1977, 77-1 CPD ¶ 42.

Here, EME provided several references to the Air Force regarding its past performance record. Based on a survey of those references, the Air Force determined that EME was an established contractor with a satisfactory past record of installing automation control systems. While we recognize that the Air Force has not provided ESUSA with the names of the references supplied by EME and the type of equipment that was installed at each facility, the Air Force determined that the projects were sufficiently similar to the work required under the IFB. We see nothing in the record which shows that the Air Force abused its discretion in making this determination in finding that EME possessed the requisite experience required under the solicitation.

Furthermore, although the IFB stated that ESUSA's system was the standard for bidding purposes, the solicitation omitted the clause that defines a brand name or equal solicitation and states its requirements; nor was the clause incorporated by reference as required by section 210.004(b)(3)(ii)(B) of the DOD Supplement to the Federal Acquisition Regulation, 48 C.F.R. § 210.004(b)(3)(ii)(B) (1985). Consequently, EME was not required to provide any descriptive information demonstrating how its product would meet the IFB requirements, since by signing the bid EME agreed to provide items conforming to the IFB requirements. See Connecticut Telephone and Electric Corp., B-217101, Feb. 25, 1985, 85-1 CPD ¶ 233. EME took no exception to the IFB requirements and, accordingly, the Air Force properly found the bid responsive.

Finally, we note that whether EME ultimately provides the Air Force with an automation control system which complies with the specifications is a matter of contract administration for the agency, not GAO. Bender Shipbuilding & Repair Co., B-219629.2, Oct. 25, 1985, 85-2 CPD ¶ 462.

The protest is denied.


Harry R. Van Cleve
General Counsel