



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: CVC Products, Inc.  
File: B-224467  
Date: October 31, 1986

## DIGEST

1. General Accounting Office review of subcontract awards by Department of Energy operating contractors is only to determine whether such awards were consistent with the federal norm, i.e., the policy objectives in the federal statutes and regulations.
2. Prime contractor's rejection of subcontractor proposal was reasonable where offeror failed to address a number of the solicitation's requirements.
3. Prime contractor is not required to discuss deficient areas in an offeror's quotation where solicitation indicated that discussions might not be held and procurement was handled like sealed bidding.
4. Protest that awardee is not qualified to build the system specified in the solicitation is a protest against an affirmative determination of responsibility that the General Accounting Office will not review absent a showing of possible fraud or bad faith on the part of procuring officials or that definitive responsibility criteria have not been applied.

## DECISION

CVC Products, Inc. protests the award of a contract to BW Systems under request for quotations (RFQ) No. RC-50084, issued by Midwest Research Institute in its capacity as operator of the Solar Energy Research Institute (SERI) on behalf of the Department of Energy (DOE). We deny the protest in part and dismiss it in part.

The RFQ solicited quotations for a thin film sputtering system and instructed offerors to include technical data with their quotations. It also reserved to Midwest the right to make award without discussions.

Five firms responded to the RFQ. Two of these firms, CVC and BW, also submitted alternate quotes. SERI's technical staff determined that the only quotations that were responsive to the solicitation requirements were the two submitted by BW. Therefore Midwest made award based on BW's alternate quotation, at \$230,000.

CVC contends that it should have received the award since its alternate quotation at a price of \$212,758 was lower than the BW quotation selected for award. CVC also argues that BW is not qualified to build the system.

Midwest reports that CVC's quotation was rejected as "nonresponsive" because it did not meet a number of the solicitation's requirements. According to Midwest, CVC's quotation did not indicate that its system would meet the solicitation's uniformity requirement of less than +5 percent, or the requirements for a laminar flow hood and for a computer to control the equipment and for variable-angle ion etching. Further, Midwest states that CVC's quotation did not show that it would meet the solicitation requirements in several other areas, including automatic gas and fail safe controls as well as pumpdown time and base pressure.

CVC argues that it was never informed that its quotation was unacceptable and that it would have taken steps to cure any problems if it had been so informed. CVC also challenges the agency's determination that it failed to address some of the solicitation requirements.

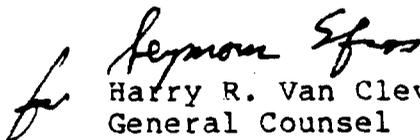
We review subcontract awards by DOE operating contractors only to determine whether they were consistent with and achieved the policy objectives of the "federal norm," i.e., the fundamental principles of federal procurement law as set forth in the statutes and regulations that apply to direct federal procurements. BECO Corp., B-219651, Nov. 26, 1985, 85-2 CPD ¶ 601. We think that Midwest's rejection of CVC's quotation was reasonable and within the federal norm.

Here, while CVC contests some of the grounds cited for rejection of its quotation, it does not contend that its quotation and literature stated that a laminar hood was included or that it responded to the pumpdown or base pressure requirements. In both instances, the protester does not argue that the requirements are unimportant, but contends that the matters could have been easily clarified during discussions.

Since CVC's quotation and literature admittedly did not address at least two material requirements of the solicitation, the rejection of the quotation was proper. See Castle/Division of Sybron Corp., B-219056, Aug. 7, 1985, 85-2 CPD ¶ 142. Further, we do not believe that Midwest was obligated to conduct discussions with CVC. The solicitation specifically provided that award could be made without discussions and the record shows that no discussions were in fact held with any of the offerors after quotations were received. Moreover, while the solicitation was called an RFQ, the procurement procedures used by Midwest here were like those applicable to competitive sealed bidding under which award is made, without discussions, to the lowest responsive, responsible bidder.

Finally, CVC argues that BW is not qualified to build the system specified in the solicitation. This concerns Midwest's affirmative determination of BW's responsibility. Our Office does not review an affirmative determination of responsibility in the absence of a showing of possible fraud or bad faith on the part of the procuring officials or that definitive responsibility criteria have not been applied. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1986); Brunswick Corp., B-223577, Sept. 16, 1986, '86-2 CPD ¶ \_\_\_\_\_. We dismiss this argument.

The protest is denied in part and dismissed in part.

  
Harry R. Van Cleve  
General Counsel