



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Biddle Instruments; Tektronix, Inc.--
Reconsideration

File: B-225769.2, B-225769.3

Date: September 15, 1987

DIGEST

Resolicitation under revised specifications, rather than award to protester, is appropriate where solicitation requirements exceeded agency's minimum needs and ambiguity in solicitation--disparity between specifications of brand name product and salient characteristics--precluded competition on a common basis.

DECISION

Biddle Instruments and Tektronix, Inc. request reconsideration of our decision in Tektronix, Inc., B-225769, June 8, 1987, 87-1 CPD ¶ 580. In that decision, we sustained Tektronix's protest against the award of a contract to Biddle under invitation for bids (IFB) No. M00027-87-B-0004, issued by the United States Marine Corps for time domain reflectometers (TDRs), and recommended that the requirement be resolicited. Both firms question our recommendation.

We affirm our recommendation.

BACKGROUND

The solicitation had requested bids to supply "Tektronix model 1502, Biddle model 431 or equal" TDRs, but we found that Biddle's offer of its name-brand model 431 TDR was nonresponsive to the first salient characteristic set forth in the IFB. Nevertheless, we did not recommend award to Tektronix, the only other offeror. In this regard, we took into consideration the Marine Corps' determination that Biddle's model 431 TDR in fact will satisfy its minimum needs at a price (\$1,519,058.50) approximately \$350,000 less than Tektronix's (\$1,880,603). Moreover, we concluded that there was an ambiguity in the solicitation, created by the disparity between the specifications of the brand name product and the salient characteristics. We recommended that the agency resolicit under specifications reflecting

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only its minimum needs and eliminating any inconsistency between the brand name equipment and the salient characteristics.

BIDDLE RECONSIDERATION

Biddle now contends that we should have recommended award to Biddle since, as the Marine Corps has confirmed, its model 431 TDR satisfies the Marine Corps' practical needs. It further argues that our decision will result in excessive procurement costs. This argument is without merit. As explained above, Biddle's bid was nonresponsive to the IFB as written and thus could not be accepted for award. A contracting officer may not waive a salient characteristic in an IFB even where it ultimately is determined that the offered product satisfies the agency's minimum needs; the other bidders have a right to assume that the solicitation requirements upon which they based their bids will be enforced. See Scanray Corp., B-215275, Sept. 17, 1984, 84-2 CPD ¶ 299. It is our well-established position that the importance of maintaining the integrity of the competitive bidding process outweighs any cost advantage of accepting a nonresponsive bid. See Master Security, Inc., B-225719, et al., Feb. 26, 1987, 87-1 CPD ¶ 226.

TEKTRONIX RECONSIDERATION

In its request for reconsideration, Tektronix questions our decision to recommend resolicitation rather than award to it as the next low, responsive offeror. Tektronix argues that where a brand name product does not meet the salient characteristics, resolicitation is only justified if the salient characteristics do not accurately reflect the government's minimum needs and the improper characteristics had a prejudicial effect on preservation of the integrity of the competitive bidding system. In this regard, Tektronix contends that the Marine Corps has never stated that the salient characteristics did not reflect its minimum needs. We disagree.

The Marine Corps has determined that the Biddle model 431 TDR--even absent certain material capabilities required under the IFB--will satisfy its minimum needs. Such a determination clearly indicates that the IFB specifications exceeded the agency's minimum needs. The Marine Corps also has confirmed that the specifications overstated its needs by resoliciting under brand-name-or-equal specifications omitting the salient characteristics Biddle's model did not meet. We point out that we favor this change, which potentially expands the field of competition, since the objective of our bid protest function is to insure full and

open competition for government contracts. See Consulting and Program Management Services, Inc.--Request for Reconsideration, B-225369.2, July 15, 1987, 87-2 CPD ¶ 45. We add that the discrepancy between the specifications of the brand name product and the salient characteristics clearly prejudiced Biddle, since it precluded acceptance of Biddle's offer of its specified brand name TDR.

Since the specifications exceeded the agency's minimum needs and were insufficiently definite and free from ambiguity to permit competition on a common basis, it remains our view--and our recommendation--that the agency should resolicit under revised specifications.

Our decision is affirmed.

for *Harry R. Van Cleave*
Comptroller General
of the United States