



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Repco Incorporated
File: B-225496.3
Date: September 18, 1987

DIGEST

1. Contention that awardee's proposal does not satisfy requirement in specifications for standard, current product because one component is listed as "to be designed" is without merit since reasonable interpretation of requirement is that standard product may be modified to meet specialized requirements set out in specifications.
2. In request for proposals (RFP) for radio fire alarm system, provisions included in specifications requiring that equipment provided consist of standard products of a manufacturer regularly engaged in manufacture of radio fire alarm systems products, which has in service a system similar to that called for by the RFP, do not constitute definitive responsibility criteria since they do not set out specific, objective standards for measuring offerors' capability to perform.
3. General Accounting Office will not review contracting officer's affirmative responsibility determination where there is no showing that it was made fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation were not met.

DECISION

Repco Incorporated protests the award of a contract to Joslyn Defense Systems, Inc. under request for proposals (RFP) No. DAAA03-86-R-0059, issued by the Army for a radio fire alarm system at the Pine Bluff Arsenal, Pine Bluff, Arkansas. We deny the protest in part and dismiss it in part.

The RFP called for offers to furnish and install a radio fire alarm system in accordance with the specifications set out in the RFP. Of the five proposals received, the Army found only Repco's and Joslyn's proposals technically

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acceptable. On April 24, 1987, award was made to Joslyn as the lowest priced, technically acceptable offeror.

RepcO contends that Joslyn does not satisfy the provisions set out in section 2.4 of the specifications included in the RFP, which provides in relevant part as follows:

"Standard Products: Material and equipment furnished shall be the standard-current-products of one manufacturer regularly engaged in the manufacture of radio fire alarm systems products and shall essentially duplicate items that have performed satisfactorily in the manner intended. . . . The Radio Fire Alarm System shall be listed by the Underwriters Laboratories Inc. for fire alarm service or other approved certified testing facility."

RepcO maintains that Joslyn will not furnish all "standard-current-products"; Joslyn is not regularly engaged in the manufacture of fire alarm systems products; Joslyn does not have in service any systems similar to the system called for by the RFP; and Joslyn's system is not approved by Underwriters Laboratories (UL).^{1/}

With regard to the requirement for "standard-current-products," Repco states that Joslyn's proposal designates one component of its system, the alarm/system logic board, as "to be designed." As a result, Repco argues, Joslyn's proposal shows that it will not meet the requirement to provide all standard, current products. Since Repco contends that Joslyn's proposal on its face took exception to a material requirement of the RFP, we will review the proposal and the Army's evaluation to determine whether the proposal

^{1/} The Army argues that the protest is untimely to the extent that Repco alleges that Joslyn's system lacks UL approval, since the protest was filed more than 10 days after Repco was notified that award had been made to Joslyn, at which time, as Repco agrees, it was on notice of this basis of protest. In any event, the Army argues, UL approval is a performance requirement only, not a precondition to award. Repco agrees with the Army that UL approval was not a precondition to award, and states that it is not challenging Joslyn's technical acceptability based on lack of UL approval. Instead, Repco states that it relies on Joslyn's lack of UL approval as further evidence that Joslyn generally lacks the capability to perform as required.

as submitted reasonably could be considered acceptable. See Clausing Machine Tools, B-216113, May 13, 1985, 85-1 CPD ¶ 533.

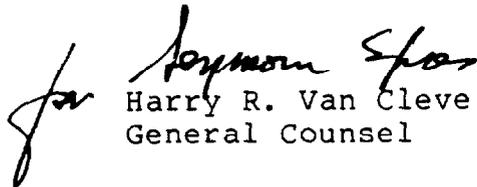
According to the Army, the statement in Joslyn's proposal that the logic board is to be designed did not affect its determination that Joslyn's proposal was technically acceptable since it merely reflected the need to modify any standard logic board, including Repco's, to conform to the Army's specialized technical requirements as set out in the specifications. In our view, the Army's position is a reasonable interpretation of the specifications as a whole since it is consistent with both the requirement to meet the Army's specialized technical needs and to provide a standard, current product. See Clausing Machine Tools, B-216113, supra. Accordingly, we see no basis to object to the Army's determination that Joslyn's proposal was technically acceptable despite its proposed design modification to the logic board.

To the extent that Repco also argues that, despite statements to the contrary in Joslyn's proposal, Joslyn does not meet the other qualifications in section 2.4--because it is not regularly engaged in the manufacture of fire alarm systems products; it does not have a similar system in service; and its system is not yet UL approved--Repco is challenging the contracting officer's determination that Joslyn is a responsible firm capable of performing as required. We will not review a contracting officer's affirmative responsibility determination absent a showing that it was made fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation were not met. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1987); Ridge, Inc., 65 Comp. Gen. 663 (1986), 86-1 CPD ¶ 583. We see no basis to review the contracting officer's determination here, since Repco concedes that there is no evidence of fraud or bad faith, and as discussed below, the provisions in section 2.4 of the specifications on which Repco relies do not constitute definitive responsibility criteria.

Definitive responsibility criteria are objective standards established by a contracting agency in a particular procurement to measure the offerors' ability to perform the contract. C.R. Daniels, Inc., B-221313, Apr. 22, 1986, 86-1 CPD ¶ 390. Such criteria in effect represent the agency's judgment that an offeror's ability to perform in accordance with the specifications for that procurement must be measured not only against the traditional and subjectively evaluated factors, such as adequate facilities and financial resources, but also against more specific requirements,

compliance with which at least in part can be determined objectively. Zero Mfg. Co.--Request for Reconsideration, B-224923.2, Oct. 28, 1986, 86-2 CPD ¶ 485. Here, the provisions in section 2.4 of the specifications on which Repco relies do not set out specific, objective standards measuring the offerors' ability to perform; rather, the provisions express in general terms factors which are encompassed by the contracting officer's subjective responsibility determination. See King Fisher Co., B-205003, June 16, 1982, 82-1 CPD ¶ 592 (bidder's ability to obtain UL approval is not a definitive responsibility criterion); Patterson Pump Co., B-204694, Mar. 24, 1982, 82-1 CPD ¶ 279 (general clause requiring submission of information regarding offeror's "similar work" and "previous experience" is not a definitive responsibility criterion); National Ambulance and Escort Service, Inc., B-196511, Nov. 8, 1979, 79-2 CPD ¶ 342 (requirement that bidders be "regularly established in the business called for" is not a definitive responsibility criterion). As a result, we find that the provisions do not constitute definitive responsibility criteria.

The protest is denied in part and dismissed in part.


Harry R. Van Cleve
General Counsel