



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Teledyne MEC
File: B-228469
Date: October 30, 1987

DIGEST

Solicitation provision indicating test data is not available for procurement of an item from concerns that have not previously manufactured similar items is not sufficiently specific and objective to be considered a definitive responsibility criterion.

DECISION

Teledyne MEC protests the award of a contract to Microwave Laboratories, Inc. (MLI) under requests for proposals No. N00383-87-R-6508 issued by the Aviation Supply Office, Department of the Navy, for electronic countermeasure devices called traveling wave tubes. Teledyne claims that the award was improper because MLI cannot meet a definitive responsibility criterion in the RFP.

The RFP stated as follows:

"The tubes are highly complex and extremely difficult to manufacture. An unusually low production yield of satisfactory tubes has been experienced. Past difficulties encountered in the manufacture of these tubes indicate that available data is inadequate to procure these tubes from concerns that have not previously manufactured these--or similar tubes."

According to Teledyne, this clause sets forth a definitive responsibility criterion which indicates that the Navy intended to award the contract to an offeror that had previously manufactured traveling wave tubes. Teledyne argues that the clause contains a "specific and objective standard" under which the Navy "limited the class of bidders to those meeting qualitative and quantitative specifications necessary for contract performance." Teledyne cites our decisions in Vulcan Engineering Co., B-214595, Oct. 12, 1984, 84-2 C.P.D. ¶ 403 and Tupley Realty Co., Inc., B-221459, Apr. 23, 1986, 86-1 C.P.D. ¶ 398, as instances where we deemed prior experience requirements to be definitive responsibility criteria.

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As a general rule, affirmative determinations of responsibility are not reviewed by this Office unless possible fraud on the part of the procuring officials is shown or, as is alleged in this protest, the solicitation contains definitive responsibility criteria which allegedly have been misapplied. Sylvan Service Corp., B-219077, June 17, 1985, 85-1 C.P.D. ¶ 694.

Definitive responsibility criteria are specific and objective standards, established by an agency for a particular procurement, for use in measuring an offeror's ability to perform the contract; these special standards must be met as a precondition to award. Hettich GmbH and Co. KG, B-224267, Oct. 24, 1986, 86-2 C.P.D. ¶ 457. Thus, for example, where a definitive responsibility criterion involves corporate experience, it typically requires a particular type or certain level of experience which can be measured objectively, such as a requirement that the offeror have 3 years of particular experience. See, e.g., Continental Service Co., B-187700, Jan. 25, 1977, 77-1 C.P.D. ¶ 53.

The responsibility provisions in the decisions cited by Teledyne had such specific and objective requirements. The RFP clause to which Teledyne refers in this procurement, however is not sufficiently specific and objective to be considered a definitive responsibility criterion. See Gaffny Plumbing and Heating Corp., B-206006, June 2, 1982, 82-1 C.P.D. ¶ 521. Although an offeror's ability to meet such a requirement should be considered as part of the overall responsibility determination, the provision itself does not establish a standard--such as a requirement that a specific number of tubes have been manufactured or that the same or similar tubes have been successfully manufactured for some specific period--that can be applied objectively rather than subjectively. Accordingly, we will not review MLI's compliance with this provision.

The protest is dismissed.



Ronald Berger
Deputy Associate
General Counsel