



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Leslie Controls, Inc.

File: B-229813

Date: April 7, 1988

DIGEST

1. Solicitation requirements that contractor overhaul and repair designated items in accordance with specified terms and conditions are performance requirements, not definitive responsibility criteria, and the ability to comply with these requirements is encompassed within the contracting officer's subjective responsibility determination.
2. An affirmative determination of responsibility does not reflect bad faith or fraud where the only evidence presented is that one agency official found the awardee's performance of predecessor contract to be unsatisfactory, but record shows agency considered other positive information in making its determination.

DECISION

Leslie Controls, Inc., protests the award of a contract to Valcon Sales and Services for the repair and overhaul of Leslie-manufactured valves, under request for proposals (RFP) No. N00189-87-R-0407, issued by the Naval Supply Center, Norfolk Virginia. Leslie principally alleges that Valcon cannot overhaul Leslie valves according to the contractual standards set forth in the RFP. Leslie also alleges that the Navy improperly awarded the contract solely on the basis of cost.

We deny the protest.

The contract awarded Valcon under this solicitation was a follow-on to one awarded the firm in 1985. Leslie challenged this prior award in an unsuccessful protest to our Office, alleging in part that Valcon was incapable of meeting the overhaul requirements of the contract because only Leslie had access to the original equipment

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manufacturer's (OEM's) drawings and specifications. Leslie Co., B-218632, Aug. 8, 1985, 85-2 CPD ¶ 149. We found that the basic thrust of Leslie's argument was that the competition should be restricted to Leslie which, as the OEM, was the only firm capable of satisfactorily performing the contract. We dismissed this aspect of the protest because generally we do not consider it appropriate to review protests alleging that particular competitions should be restricted to a single source.

In this protest, Leslie asserts that Valcon should not have been awarded the contract because Valcon is nonresponsible. Specifically, Leslie states that due to Valcon's lack of access to genuine Leslie parts and relevant technical drawings, Valcon is unable to meet definitive criteria set forth in the solicitation for the repair and overhaul of Leslie valves; Leslie further implies that the contracting officer's determination that Valcon was responsible suggests bad faith.

Leslie's contentions regarding Valcon's alleged noncompliance with definitive responsibility criteria are without merit. Definitive responsibility criteria are specific and objective standards established by a contracting agency in a particular procurement to measure an offeror's ability to perform the contract. Repco Inc., B-225496.3, Sept. 18, 1987, 87-2 CPD ¶ 272. 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, 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. Id. On the other hand, specification requirements concerning the product to be furnished (for example, a requirement that a designated part be obtained from an approved source of supply), constitute performance requirements, not definitive responsibility criteria. Noah Howden, Inc., B-227979, Oct. 22, 1987, 87-2 CPD ¶ 386.

There are no definitive responsibility requirements here. The RFP requires the contractor repair and overhaul Leslie valves in exact conformance with specific guidelines set forth in the RFP. These are performance requirements, since they concern actual contract performance, not the contractor's ability to perform. The ability to meet these standards therefore is encompassed by the contracting officer's subjective responsibility determination. Noah Howden, Inc., B-227979, supra.

Leslie's further challenge to the Navy's affirmative determination of Valcon's responsibility stems from its assertion that Valcon's performance under the predecessor contract was unsatisfactory and also, as indicated above, from its understanding that Valcon does not have access to genuine Leslie parts and other proprietary information needed to perform the contract. As support for its position, Leslie refers to an internal Navy document, evidently prepared by the Chief Engineer at a facility where performance under the predecessor contract took place, which strongly criticized Valcon's performance under this prior contract, questioned Valcon's access to the materials described above, and concluded that Valcon should be excluded from competing for future contracts pertaining to the overhaul and repair of Leslie valves.

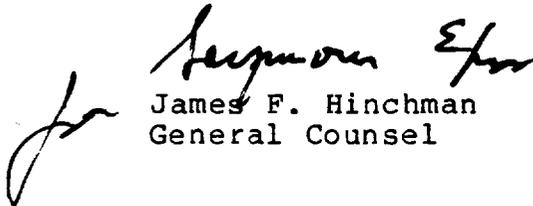
One official's negative opinion regarding Valcon's performance under the predecessor contract does not establish that the contracting officer's affirmative determination of the firm's responsibility was fraudulent or made in bad faith. In fact, the record demonstrates that the contracting officer's determination was based on a careful consideration of Valcon's performance under this prior contract. The record reveals that the contracting officer received assurances from agency personnel having intimate knowledge of Valcon's performance under the predecessor contract that deficiencies cited during the early stages of Valcon's performance were corrected and that Valcon's work during the remainder of the contract's term, including its ability to gain access to Leslie parts and other proprietary data, was adequate in every respect. Therefore, we have no reason to question the propriety of this affirmative responsibility determination.^{1/}

Leslie also challenges the Navy's source selection procedures for this procurement, contending that the Navy determined that price was to be the sole consideration in selecting the awardee, and that selection on this basis was at variance with applicable laws, regulations, and Department of Defense policies implemented to discourage the procurement of inferior quality goods and services. This basis of protest is without merit. The solicitation

^{1/} Leslie also asserts that Valcon's proposal should have been found technically unacceptable because of Valcon's alleged inability to perform the desired services. However, where, as here, matters concerning an offeror's capability to perform are not set forth in the RFP as evaluation factors, they concern responsibility, not technical acceptability. See Armament Engineering Co., B-228239, Oct. 9, 1987, 87-2 CPD ¶ 349.

provided that technical merit would be a consideration in the award process, specifically stating that award would be made to the responsive (i.e., technically acceptable) offeror whose proposal offered the lowest overall cost to the government. Contracting agencies enjoy wide latitude in determining the manner in which proposals will be evaluated and our Office will not object to such a determination so long as the method chosen provides a rational basis for source selection. See Pacord Inc., B-224529.2, Mar. 6, 1987, 87-1 CPD ¶ 255. Awarding a contract to the low, technically acceptable offeror clearly takes technical factors into account and is neither improper nor unusual.

The protest is denied.

James F. Hinchman
General Counsel