



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Telos Field Engineering
File: B-233250
Date: November 8, 1988

DIGEST

Solicitation requirements that contractor service equipment with trained and experienced personnel 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.

DECISION

Telos Field Engineering protests the proposed award of a contract to Halifax Engineering, Inc. under request for proposals (RFP) No. F34650-88-R-0148 issued by the Department of the Air Force for computer maintenance services at Tinker Air Force Base, Oklahoma. We dismiss the protest.

The RFP required the maintenance of four IBM units which, Telos alleges, are new models that can be serviced only by IBM's in-house maintenance personnel. The solicitation required in section 3.1.6 of the statement of work that the contractor provide maintenance personnel with training and expertise on each piece of equipment. Personnel were to have the expertise to operate the software diagnostics and to use the manufacturer's maintenance repair kits, and to have knowledge of the computer operating systems. Section 3.1.9 required the contractor to provide all necessary support equipment and tools, test equipment, manufacturer's or equivalent diagnostic software, and documentation necessary to maintain and repair the equipment. Award was to be made to the low responsive, responsible offeror on all items.

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Telos states that because of the requirement to provide maintenance personnel with training and expertise on each piece of equipment, its proposal included the use of IBM personnel to perform the maintenance services on the new IBM models, because, it states, only IBM personnel can meet the training requirement. According to Telos, this resulted in an increase in Telos' price.

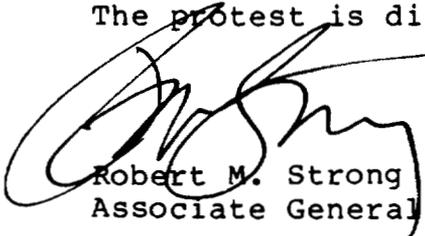
Telos alleges that no other offeror, including Halifax, the proposed awardee, submitted a proposal which met the requirements for trained and experienced personnel. Telos believes that the contracting officer knew or should have known this, and that the contracting officer did not evaluate the proposals fairly since Halifax did not meet the requirements in paragraphs 3.1.6 or 3.1.9 of the statement of work. Telos argues that Halifax is nonresponsible because it did not offer IBM personnel to service the new IBM models and therefore did not meet the definitive responsibility criteria set forth in the statement of work.

Telos contentions regarding Halifax'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.

In a similar case, Johnson Controls, Inc., B-200466, Feb. 20, 1981, 81-1 CPD ¶ 120, the solicitation required that service personnel employed by the successful contractor for the repair and maintenance of a highly complex energy management and control system "be certified by the manufacturer's representative to be qualified to maintain the . . . system." We found that this provision, which states how and by whom the work is to be accomplished, was a performance requirement, and distinguishable from requirements which are preconditions of award.

In our view, therefore, the referenced paragraphs of the statement of work are not definitive responsibility requirements. The RFP requires the contractor to repair and service IBM equipment by using experienced personnel. 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. In such circumstances, our Office will object to an agency's determination that an offeror is responsible only if a protester shows that the agency acted in bad faith. 4 C.F.R. § 21.3(m)(5) (1988). No such showing has been made here.

The protest is dismissed.



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