



Comptroller General
of the United States

Washington, D.C. 20548

Matter
146250

Decision

Matter of: Electroswitch

File: B-246786

Date: March 27, 1992

William M. Mello for the protester,
Jason S. Shallcross for Shallco, Incorporated, an interested party,
Vera Meza, Esq., and Caroline Ford, Esq., Department of the Army, for the agency,
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid which constitutes an unequivocal offer to perform in accordance with terms of invitation for bids (IFB) and does not take any exception to the IFB's material terms was properly considered responsive.

DECISION

Electroswitch protests the award of a contract to Shallco, Incorporated under invitation for bids (IFB) No. DAAK01-91-B-0186, issued by the Department of the Army for rotary switches, national stock number (NSN) 5930-01-046-6949. Electroswitch essentially contends that Shallco's bid should have been rejected as nonresponsive because Shallco has not qualified its products for inclusion on the qualified products list (QPL), which Electroswitch believes is required under the IFB.

We deny the protest.

The IFB, a small business set-aside, was issued on June 6, 1991, and contemplated the award of a 3-year firm, fixed-price requirements contract for rotary switches. The solicitation required that the rotary switches be produced, tested, and inspected in accordance with drawing No. 72-5009, included in the IFB. Numerous "Notes" or requirements are listed on the drawing, in particular, Note 1 which states that "[m]aterials and construction shall conform to [military standard] MIL-S-6807." MIL-S-6807 specifies testing, inspection, quality, and delivery instructions for the production of rotary switches, and is also used to

qualify contractors prior to award for specific part numbers or military standard (MS) parts/components. Qualified contractors are listed on a mandatory qualified product list (QPL) once they become qualified for a particular part number, and are exempt from further testing for that part for a period of 3 years. To date, three part numbers (MS21994, MS21995, and MS25002) have been qualified to MIL-S-6807, and Electroswitch is the only QPL contractor for these three parts.

Two bids were received by the July 9 bid opening, of which Shallco's was apparently low. After conducting an on-site pre-award survey of Shallco, the agency made award to Shallco as the low responsible bidder. This protest followed.¹

Electroswitch argues that Shallco's bid is nonresponsive because Shallco's switch does not meet the requirements of MIL-S-6807, as required by drawing 72-5009. In essence, Electroswitch argues that Shallco's switch is noncompliant because Shallco's products are not listed on the QPL as required by the solicitation, and Shallco has not completed the required QPL compliance testing, which Electroswitch contends will take a minimum of 6 months.

A responsive bid is one that offers to perform, without exception, the exact thing called for in the solicitation and, upon acceptance, will bind the contractor to perform in accordance with all the invitation's material terms and conditions. Thompson Power, B-244894, July 31, 1991, 91-2 CPD ¶ 118. Here, Shallco made an unequivocal offer to furnish the required number of rotary switches in accordance with drawing 72-5009, and has legally obligated itself to supply the rotary switches in exact accordance with the IFB specifications.

¹Electroswitch's second low bid was rejected as nonresponsive for failure to submit a signed Certificate of Procurement Integrity. The agency argues that Electroswitch is not an interested party to file this protest since Electroswitch cannot be awarded the contract. However, since only two bids were received, Electroswitch is an interested party to challenge the responsiveness of Shallco's bid because the appropriate remedy if its protest were sustained would be resolicitation under which Electroswitch could compete. Dantec Elecs., Inc., B-243580, July 17, 1991, 91-2 CPD ¶ 68.

The IFB does not contain the "Qualification Requirements" provision at Federal Acquisition Regulation (FAR) § 52.209-1, which must be included in any solicitation that is subject to a qualification requirement. See FAR § 9.206-2; Comspace Corp., B-237794, Feb. 23, 1990, 90-1 CPD ¶ 217. On the contrary, under the terms of MIL-S-6807, referenced by the solicitation drawing, pre-qualification for the rotary switches being procured here is not required. Section 4.6 of MIL-S-6807 provides that "[i]nspection requirements for switches not covered by MS sheets shall be performed, after award of contract and prior to production"

The agency is procuring part 72-5009, which is not an MS part/component.² Accordingly, the IFB permits any contractor to bid and qualify its part after award. Whether Shallco actually complies with its obligation to furnish a rotary switch in compliance with drawing 72-5009 is a matter of contract administration which is the primary responsibility of the contracting agency and not for consideration by our Office. 4 C.F.R. 21.3(m)(1) (1991); Thompson Power, supra.

The protest is denied.


for James F. Hinchman
General Counsel

²The part number is the same as the drawing number.