



Comptroller General
of the United States

14834

Washington, D.C. 20548

Decision

Matter of: Industrial Acoustics Company, Inc.

File: B-255406.2

Date: April 8, 1994

DECISION

Industrial Acoustics Company, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 581-24-93 issued by the Department of Veterans Affairs (VA) for an audiometric examination booth.

We dismiss the protest.

The IFB sought bids for delivery and installation of a prefabricated audiometric examination booth. The solicitation incorporated a standard VA specification which described the physical characteristics, acoustical performance requirements, and electromagnetic shielding attenuation requirements of the examination booth. The solicitation required that bidders submit descriptive literature, including test reports, with their bids to establish that their examination booth complied with these requirements. All laboratory testing was to be conducted at a nationally recognized, nationally accredited, or federal government laboratory.

Two bids were submitted, including one from Industrial Acoustics and one from Acoustic Systems. Initially, the agency awarded the contract to Industrial Acoustics. Acoustic Systems protested this award to our Office, arguing that the agency improperly found its bid nonresponsive for failure to submit required test data. Upon review, the agency determined that both Acoustic Systems' bid and Industrial Acoustics' bid were nonresponsive because neither firm submitted all of the required test data. The agency thus proposed to terminate the award to Industrial Acoustics, cancel the IFB and complete the acquisition through negotiation.

Industrial Acoustics disputes the agency's determination that its bid was nonresponsive.

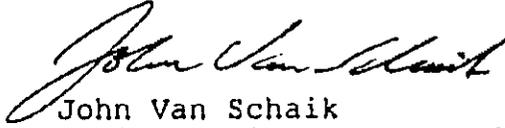
The issue raised by this protest is identical to that raised in Industrial Acoustics Co., Inc.; Acoustic Sys., B-255123.2

et al., Mar. 29, 1994, 94-1 CPD § ____, which involved determinations by the VA that Industrial Acoustics' bids were nonresponsive under two solicitations for audiometric examination booths. We did not reach the merits of Industrial Acoustics' protest under those solicitations because the record showed that the protester labeled each page of the test data that it submitted to establish compliance with the IFB's requirements with the following restrictive legend: "Proprietary Data Not to be Divulged Outside of U.S. Government." Because of the restrictive legend, none of Industrial Acoustics' data was publicly disclosed.

In Industrial Acoustics Co., Inc.; Acoustic Sys., supra, we stated that under the Competition in Contracting Act of 1984, 41 U.S.C. § 253a, bids are to be opened publicly to protect both the public interest and the bidders against any form of fraud or favoritism. VACAR Battery Mfg. Co., Inc., B-223244.2, June 30, 1986, 86-2 CPD § 21. We also stated that a restriction upon disclosure of bid information renders a bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of products offered, or those elements of a bid relating to quantity, price, and delivery terms. Id.; see also Federal Acquisition Regulation § 14.404-4. In other words, a restrictive legend renders a bid nonresponsive if it prohibits the disclosure of information necessary to establish the responsiveness of the bid to the IFB's requirements. Since the solicitations required the submission of test data to establish that the booths offered complied with the specifications and since Industrial Acoustics prohibited the disclosure of the test data which was necessary to establish compliance, we held that Industrial Acoustics' restriction on the data's disclosure rendered its bids nonresponsive.

Here, the IFB required that bids include the same test data in order to establish that the booth offered complied with the specifications. In addition, as in the previous case, the IFB here advised that failure to submit the test data would result in rejection of the bid as nonresponsive. Finally, under this IFB, the protester again restricted disclosure of its test data with an identical restrictive legend and none of Industrial Acoustics' data was publicly disclosed. Since the facts in this protest are identical to those in Industrial Acoustics' protest which we denied in our decision of March 29 and since the protester's bid is likewise nonresponsive because it bears a restrictive legend, we see no useful purpose to be served by our further

consideration of this protest. Government Contract Advisory Servs., Inc., B-255918; B-255919, Mar. 8, 1994, 94-1 CPD ¶ ____; Wallace O'Connor, Inc., B-227891, Aug. 31, 1987, 87-2 CPD ¶ 213. Accordingly, we dismiss the protest.



John Van Schaik
Acting Assistant General Counsel