



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter Of: CBI Services, Inc.

File No.: B-258790

Date: January 9, 1995

DECISION

CBI Industries, Inc. protests the award of a contract to Tri-Ad Constructors by the National Aeronautics & Space Administration (NASA) under invitation for bids (IFB) No. 2-36275.

We dismiss the protest.

CBI alleges that Tri-Ad is nonresponsible because Tri-Ad does not meet the following requirements contained in the IFB, which CBI characterizes as "definitive responsibility criteria":

"Contractors performing cutting and welding on this contract shall hold, as a minimum, an applicable ASME [American Society of Mechanical Engineers] certificate of Authorization for Construction and Repair of Pressure Vessels ("U" or "R" Stamps)."

"The Contractor shall maintain an approved quality control system in accordance with the requirements of Appendix 10 of the ASME Boiler and Pressure Vessel Code, Section VIII, Division I."

A definitive responsibility criterion is an objective standard, established by the agency for a particular procurement to measure an offeror's ability to perform the contract. In effect, such a criterion reflects the agency's judgment that the offeror's ability to perform in accordance with the specifications must be measured not only against the traditional and subjectively evaluated responsibility factors but also against a more specific requirement, compliance with which can be measured objectively. PTR-Precision Tech., Inc., B-243439, Aug. 1, 1991, 91-2 CPD ¶ 110. In most cases, when a definitive criterion is included in a solicitation, the solicitation will require a vendor to submit evidence of compliance with the criterion prior to award, and a vendor's failure to do so requires a determination that the vendor is not responsible.

Definitive criteria, however, must be distinguished from contract performance provisions. Solicitation provisions that require a contractor to do something during performance are simply that--they impose obligations upon the bidder/offeror if the bidder/offeror is awarded the contract. Unlike definitive responsibility criteria, performance provisions do not impose any requirements that have to be satisfied prior to award, and contracting officers need only decide, in making an overall responsibility determination, whether the bidder/offeror intends to and otherwise has the ability to meet the requirements set forth in such provisions. See Auto Discount Rent-N-Drive Sys., Inc.; Jerry's U-Drive, Inc.; and George Corp., B-197236 et al., July 28, 1980, 80-2 CPD ¶ 73.

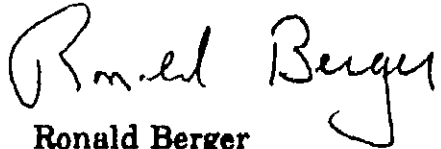
The requirement for the "[c]ontractor [to] maintain an approved quality control system" clearly is a performance specification. It imposes a contractual duty on the awardee to maintain a quality control system; it imposes no obligation on the bidder that has to be satisfied prior to award.

We think the same conclusion applies to the ASME certificate requirement. Although we have previously held that a requirement that the "successful bidder shall be A.S.M.E. certified" is a definitive responsibility criterion, see M&M Welding and Fabricators, Inc., B-187573, Jan. 17, 1977, 77-1 CPD ¶ 35, the solicitation provision in this case is different. It imposes no requirement on a bidder, and is not identified in the solicitation as a bidder qualification requirement. Rather, it is part of the contract work specifications and, more specifically, a part of a paragraph setting forth certain qualifications that are to be met by those performing different work under the contract. Thus, we think this provision does no more than require the awardee, upon undertaking performance, to have at that time the qualifications set forth in this paragraph if it does the work itself or, if it does not, to utilize those that do.

Since definitive criteria are not involved here, whether Tri-Ad has the capability and intention to comply with these requirements is a matter for determination by the contracting officer in determining Tri-ad's responsibility. Except in circumstances not present here, our Office does not review protests of a contracting officer's affirmative determination of responsibility since that is based on the contracting officer's subjective business judgments. 4 C.F.R. § 21.3(m)(5).

As CBI's protest in essence is a challenge to NASA's determination that Tri-Ad is responsible, this is not a matter for our further review.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in dark ink and is positioned above the printed name and title.

Ronald Berger
Associate General Counsel