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B. Gagnier
Proc # II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187487

DATE: November 29, 1976

MATTER OF: Westinghouse Electric Corporation

DIGEST:

Language inserted in bid merely to clarify bidder's understanding of Government's requirement is not a qualification requiring rejection of the bid where the clarification does not in fact limit any material provision of the IFB.

Westinghouse Electric Corporation (Westinghouse) protests award to any bidder other than Westinghouse under solicitation DACW05-76-B-0047, issued by the Sacramento District Office of the Corps of Engineers (Corps) for transformers. Westinghouse's complaint is that its bid was erroneously rejected as nonresponsive because it included in its bid the following:

"Section 3--Service of Erecting Engineer. Westinghouse interprets Paragraph 3-1.1 /of the Solicitation/ to mean that Westinghouse Electric Corporation is to be responsible for providing the erecting Contractor correct procedure to be used in installation and start-up of the transformers. Westinghouse is not to be held liable for negligence on the part of erection crew in carrying out Westinghouse suggested procedures."

By letter dated September 16, 1976, the contracting officer notified Westinghouse that its bid was considered nonresponsive since inclusion of the above language "creates a question of whether the wording places a limitation of liability on a situation where there could be joint negligence by Westinghouse and the construction contractor, the former through supervision and procedures and the latter by following these directions and actually performing the work."

In Westinghouse's view, the contracting officer's conclusion is based on a strained reading of the added language which Westinghouse states was not intended to limit its liability under paragraph 3-1.1 of the technical provisions of the IFB. That paragraph provides, in material part:

"* * *The Contractor shall furnish* * *one or more competent erecting engineers who shall supervise and be responsible for the correctness of the erecting Contractor's procedures. When so requested, he shall also supervise and be responsible for initial starting and all subsequent operation of the equipment until the field tests are completed. The erecting engineer shall instruct the Contracting Officer's representative in the operation and maintenance features of the work. * * *Erection will be performed under another contract and the erecting engineer shall cooperate fully with the erection Contractors. The work and operations of the erecting engineers will be coordinated with the program of construction at the erection site as directed by the Contracting Officer.* * *" (Emphasis added.)


The subject language anticipates the active supervision of the erecting engineer and would impose a duty on Westinghouse to intervene if it appeared to its erecting engineer that the erecting contractor's personnel were not following correct procedures. By submitting a bid Westinghouse has agreed to furnish correct installation and start-up procedures and to supervise the erecting contractor. It would be unreasonable, in our opinion, to construe the language added by Westinghouse to its bid as qualifying its responsibility for performing these contract requirements. It is clear to us that Westinghouse merely attempted to state its understanding, which is in accordance with the general rule, that the Government assumes the responsibility for performance difficulties occasioned by a directed source subcontractor's performance. Engineered Systems Inc., B-184098, March 2, 1976, 76-1 CPD 144. We find nothing in the Westinghouse bid which attempts to absolve the firm to the extent it is jointly responsible for damages.

Where, as here, a bid merely clarifies the bidder's understanding of the Government's requirements and does not limit

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the material provisions of the solicitation, it is a responsive bid and may be accepted.

Accordingly, Westinghouse's protest is sustained, and award may be made to Westinghouse if otherwise appropriate.


Deputy Comptroller General
of the United States