

04241 / 4519

R. Ryan
Proced

DECISION



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

FILE: B-190035

DATE: November 21, 1977

MATTER OF: Storage Technology Corporation--Reconsideration

DIGEST:

Although solicitation called for contractor to furnish information as to frequency, duration and quality of preventive maintenance on equipment, bidder who failed to provide such information with its bid was nevertheless responsive to solicitation, since contractor was required by terms of solicitation to provide preventive maintenance comparable to that which it provided for identical leased equipment and contractor was subject to liquidated damages in event equipment did not operate for specified period of time. Therefore information as to extent of maintenance was not material to responsiveness of bid.

Storage Technology Corporation (STC) requests reconsideration of our decision Storage Technology Corporation, B-190035, October 3, 1977, 77-2 CPD. The decision dealt with a solicitation which required the contractor to provide preventive maintenance on the equipment it furnished to the Government under the contract. The solicitation stated in this regard as follows:

"Preventive Maintenance

The Contractor shall specify in writing the frequency, duration and quality of preventive maintenance. The quality shall be comparable to that provided by the Contractor for identical leased equipment."

Unlike the protester, the low bidder did not specify in its bid the frequency, duration or the quality of preventive maintenance it would provide. The protester argued that the failure to provide such information rendered the bid nonresponsive, while the agency argued that the information could be supplied by the "Contractor" after the award was made. We agreed with the agency noting that the solicitation called for preventive maintenance "comparable to that provided by the contractor for identical leased equipment" and included a liquidated damages clause in the event the equipment was inoperative for a specified period of time. We therefore concluded that information pertaining to frequency, duration and

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quality of preventive maintenance was not a material condition of the contract and could be provided after the award was made.

In its request for reconsideration, the protester essentially argues that since the requirement for preventive maintenance, itself, was clearly a material provision of the solicitation, information as to the frequency, duration and quality of the preventive maintenance likewise was a material requirement of the solicitation. We disagree. As discussed in our prior decision, the requirement was to provide preventive maintenance comparable to that provided by the contractor for identical leased equipment, and in the event the equipment failed to operate for a minimum period of time, as specified by the solicitation, the contractor was subject to a liquidated damages provision. We remain of the view that information as to frequency, duration and quality of the preventive maintenance could be furnished by the contractor after the award was made.

Our prior decision is affirmed.


Deputy Comptroller General
of the United States