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Mixed  
Proc. I.

**DECISION**



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

**FILE:** B-191221

**DATE:** June 13, 1978

**MATTER OF:** McNally Pittsburg Manufacturing Corporation

**DIGEST:**

1. Agency determination of bidder nonresponsibility will be upheld where protester fails to show bad faith or lack of reasonable basis for determination.
2. Protester's allegation that agency employed unannounced definitive responsibility criteria is rejected where record shows that claimed definitive criteria were simply specific areas in which protester failed to demonstrate that it met experience criterion in IFB.
3. Similarity of prior experience to experience in manufacturing equipment specified in IFB is matter of judgment reserved to contracting officer in determining bidder's responsibility.

McNally Pittsburg Manufacturing Corporation (McNally) protests the award of contracts by the Department of the Air Force, Arnold Air Force Station, Tennessee (Air Force), under invitation for bid (IFB), F40650-77-B0038 (-0038) to its competitors, Axel Johnson Corporation (Axel Johnson) and Mosser Industries, Inc. (Mosser).

The contracts are for valves for the Aeropropulsion Systems Test Facility, which is a wind tunnel. The IFB was issued on June 10, 1977, and bids were opened on September 6, 1977. McNally bid on three "packages" of valves. The IFB provided for split award; however, McNally stipulated in a bid cover letter that it would accept award only on all of its package "A," its packages "A" and "B" or its packages "A," "B," and "C."

McNally was not the low bidder on package "A" or "C." It was the low bidder on the combination of packages "A" and "B." As a result, the Air Force conducted a preaward survey at McNally's plant. The survey concluded that while McNally generally had the ability to perform the contract, it did not meet the definitive experience criterion set out in section 2A, paragraph 1.2.1, of the IFB specifications with respect to several of the valves in its packages. Paragraph 1.2.1 provides:

"\* \* \* The Contractor or his subcontractor shall have built equipment of similar size and complexity to the items specified."

Based upon the negative preaward survey, the contracting officer determined McNally to be nonresponsible as to the packages on which it was low bidder. Award on all but six of the valves which were bid by McNally was made to Axel Johnson and Mosser on January 31, 1978. McNally protested to this office on February 3, 1978.

On March 9, 1978, McNally protested the issuance by the Air Force of request for proposals (RFP) F40650-78-R-0002 soliciting proposals for the six valves not awarded under IFB-0038. The RFP was necessitated by the lack of any responsive, responsible bidder for these valves. McNally contends that it should have been awarded these six valves under its bid on IFB-0038, and that the issuance of this RFP is improper. For the reasons stated below, we reject McNally's contentions and deny both protests.

McNally's protests present basically one issue, its contention that the determination of nonresponsibility was erroneous. Generally, we will not question a nonresponsibility determination unless the protester can demonstrate bad faith by the agency or a lack of any reasonable basis for the determination.

Cari Weissman & Sons, Inc., B-190304, February 17, 1978, 78-1 CPD 140; 43 Comp. Gen. 228 (1963).

The preaward survey team determined on the basis of its own observations and material submitted by McNally that the protester had never built a process air butterfly valve, a valve larger than 12 feet in diameter, a stress seal seated valve or a valve to be used at a maximum temperature of 2,500° Fahrenheit, which factors separately or in combination were specifications for a number of the valves in the "A"- "B" group. The survey concluded that McNally did not meet the requirement in paragraph 1.2.1 of the specifications that the contractor or its subcontractor have built equipment of similar size and complexity to the items specified in the IFB. The survey team, therefore, recommended no award.

McNally argues that the use of these four factors amounts to the creation of new unannounced definitive responsibility criteria. It further contends that these tests were not applied equally to all of its competitors. The Air Force asserts that in fact the four points on which McNally failed to meet the experience tests are simply specifications for which McNally failed to demonstrate by prior experience that it met the responsibility requirements of the IFB. It also states that the experience requirement was applied equally to all bidders.

We agree with the Air Force that these four areas in which McNally was determined to lack experience do not amount to unannounced definitive responsibility criteria. The listed points were no more than evidence of McNally's failure to meet the single definitive criterion, experience in manufacture of similarly large and complex equipment to the items specified in the IFB.

McNally has devoted extensive argument to claims that it has in fact built equipment similar in size

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and complexity to that solicited in the IFB. However, the Air Force determined that the equipment built by McNally was not sufficiently analogous to satisfy the experience criterion. We cannot say that this determination was unreasonable. In that connection, in Johnson Controls, Inc., B-191262, April 27, 1978, we stated:

" \* \* \* the extent to which the claimed 'similar' experience is sufficiently related to the IFB-required work to indicate the likelihood that the offeror could perform in accordance with contractual requirements must be left largely to the sound discretion and subjective judgment of the contracting officer. \* \* \*"

As regards McNally's contention that the successful bidders, Axel Johnson and Mosser, had not previously produced to the exact specification requirements, it appears from the record that the Air Force considered the valve manufacturing experience of those bidders. In Johnson Controls, supra, we recognized that a contractor qualification provision calling for similar experience by the bidder is a definitive responsibility requirement. We stated further--

" \* \* \* However, the quality and requisite similarity of that experience is a matter of judgment reserved to the contracting officer in determining the offeror's responsibility. It is this type of subjective judgment leading to an affirmative determination of responsibility which GAO has declined to review in the absence of fraud \* \* \*"

Fraud is not alleged here.

McNally has also alleged that the Air Force relaxed the requirement that a particular actuator have a 60 second stroke time, thus giving an unfair competitive advantage to Axel Johnson. However, the Air Force has stated that it intends to require full compliance with the IFB specification in this regard. McNally's allegation, therefore, appears to be without merit.

Protest denied.

*R. G. Kistner*  
Acting Comptroller General  
of the United States