



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Joint Venture Conscoop-Meyerinck

File: B-278243.4

Date: March 18, 1998

Valentino Franzone for the protester.

Christopher M. Bellomy, Esq., and D. S. Shepherd, Esq., Department of the Navy, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In response to low bidder's protest of the rejection of its bid as nonresponsive for failure to provide required information with its bid, contracting agency properly took corrective action by agreeing to accept and consider the information after bid opening where the information at issue concerned the bidder's competency to perform the contract--the bidder's responsibility--and not its performance obligation under the contract--the bid's responsiveness.

DECISION

Joint Venture Conscoop-Meyerinck protests corrective action taken by the Department of the Navy in response to a protest filed by A.I.A. Costruzioni, S.P.A., under invitation for bids (IFB) No. N62470-95-B-4290, to extend a hydrant refueling system at the U.S. Naval Air Station in Sigonella, Italy. Conscoop-Meyerinck argues that the Navy cannot now properly consider information that A.I.A. Costruzioni did not submit along with its low bid.

We deny the protest.

The solicitation, issued March 7, 1997, required prospective contractors to submit pricing for a required line item for the work involved in extending the hydrant refueling system; an optional line item for pantographs; and an optional line item for closing existing fuel tanks. IFB § 000120 at 3; IFB § 00200 at ¶ 1.2. Bids were to be evaluated and a contract was to be awarded based solely upon price. IFB § 00200 at ¶ 1.18(a).

Section 15901 of the IFB set forth some of the specifications applicable to the work to be performed under this contract. Among other things, bidders were required to employ the services of an experienced system integrator to coordinate all fuel controls and instrumentation system work during construction, testing, calibration,

and acceptance of the fuel system. IFB § 15901 at ¶ 2.2.1. Bidders were required to submit, with their bids, a certification of system integrator experience to include a description of at least three similar projects and a resume. Id.

The Navy received two bids by the September 16 bid opening. A.I.A. Costruzioni submitted the low bid of \$4,213,259, and Conscoop-Meyerinck submitted the second-low bid of \$4,565,230.¹ However, the Navy rejected A.I.A. Costruzioni's low bid as nonresponsive because its bid was not accompanied by the required information concerning the system integrator. The Navy awarded the contract to Conscoop-Meyerinck.

After the Navy denied A.I.A. Costruzioni's agency-level protest of the rejection of its bid, the firm filed a protest in our Office in which it argued, among other things, that it should have been allowed to provide this information after bid opening. On the day the agency report was due, the Navy advised our Office of its determination that the protester's bid should not have been rejected as nonresponsive because the requirement at issue related to the protester's responsibility, not the responsiveness of its bid. See, e.g., ECI Constr., Inc., B-250630, Oct. 9, 1992, 92-2 CPD ¶ 239 at 1-2. Information concerning a bidder's responsibility need not be furnished at bid opening but may be furnished up to the time of award. Id. The Navy stated that it had taken corrective action by asking A.I.A. Costruzioni to submit the required information to the agency for its responsibility determination. Since the Navy's corrective action was responsive to the protester's concern, we dismissed the protest as academic. EDP Enters., Inc., B-256368, June 14, 1994, 94-1 CPD ¶ 366 at 6; see East West Research, Inc.--Recon., B-233623.2, Apr. 14, 1989, 89-1 CPD ¶ 379 at 2. Performance of the contract awarded to Conscoop-Meyerinck was suspended shortly after A.I.A. Costruzioni filed its protest, and remains so while the Navy reviews the additional information submitted by the firm.

After it was notified of the Navy's corrective action, Conscoop-Meyerinck filed the instant protest in which it asserts that it is improper for the Navy to receive, after bid opening, any additional documents, references, or facts from bidders. According to the protester, since the IFB required bidders to submit this information along with their bids, and since A.I.A. Costruzioni did not submit the information at that time, its bid was properly rejected. Conscoop-Meyerinck is mistaken.

Generally, a bid with a material omission cannot be corrected after bid opening; such a bid is regarded as nonresponsive and must be rejected. Atlantic Co. of Am., Inc., B-241697, Jan. 16, 1991, 91-1 CPD ¶ 49 at 3. Responsiveness concerns whether a bidder has unequivocally offered to provide or perform services in accordance

¹Bids were submitted in Italian lire and converted into U.S. dollars based upon the exchange rate in effect at the time of bid opening.

with the solicitation.² ECI Constr., Inc., supra, at 1. However, not all information requested to be submitted with a bid involves responsiveness. Instead, the information may relate to bidder responsibility, that is, the bidder's ability to perform. Id. at 1-2. This type of information may be furnished up to the time of award. Id. at 2.

Here, the submission of data to determine the bidder's competency--through its use of an experienced systems integrator--clearly is not related to the bidder's performance obligation under the contract, but is a matter of the bidder's responsibility, that is, its ability to perform the work. Atlantic Co. of Am., Inc., supra; see also Beta Constr. Co., B-274511, Dec. 13, 1996, 96-2 CPD ¶ 230 at 2 (in general, solicitation requirements for information relating to a bidder's capability and experience pertain to the bidder's responsibility). Although the solicitation stated that the information was to be submitted with the bid, an agency cannot change a matter of bidder responsibility into one of responsiveness by the terms of the solicitation. Aviation Specialists, Inc.; Aviation Enters., Inc., B-218597, B-218597.2, Aug. 15, 1985, 85-2 CPD ¶ 174 at 3. As a result, A.I.A. Costruzioni properly may furnish the information after bid opening in order for the Navy to determine whether the firm is competent to perform. ECI Constr., Inc., supra, at 2; Atlantic Co. of Am., Inc., supra.

The protest is denied.

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²While Conscoop-Meyerinck apparently believes that A.I.A. Costruzioni was able to bid a lower price because it "forgot" to include the system integrator in pricing its bid, the record shows that A.I.A. Costruzioni's bid took no exception to the IFB's specifications. As a result, the firm has obligated itself to perform in accordance with the terms of the solicitation, including the requirement to employ an experienced system integrator, and its bid is responsive.