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Proc I

DECISION



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

FILE: B-193730

DATE: September 10, 1979

MATTER OF: Constantine N. Polites & Co.

DIGEST: [Protest Involving Technical Adequacy
of Bid]

Technical determination that offer was unacceptable because cadmium-plated items offered were not equal to hot-dipped galvanized brand name items in view of shorter life of former in corrosive salt water environment will not be disturbed where no evidence exists that determination was arbitrary or unreasonable.

Proc. 10018

Constantine N. Polites & Co. (Polites) protests its failure to receive an award under Portsmouth Naval Shipyard (Portsmouth) request for quotations No. NOO102-78-R-7209, a procurement negotiated under 10 U.S.C. § 2304(a)(2) (1976)--"the public exigency will not permit the delay incident to advertising." The solicitation was issued on September 26, 1978. The original October 10 deadline for the receipt of proposals was subsequently extended to October 30. Two firms submitted proposals. On December 1 the Review Board concurred with the contracting officer's determination to award the contract to other than the low offeror, Polites. Award was made in early December. Delivery of the items purchased and final payment under the contract were completed as of January 10, 1979.

Polites' offer to supply seven of the 10 items to be purchased was found unacceptable for two reasons. Polites offered to supply item No. 0004 (couplers) 3 days after the award of a contract and the remaining six items 90 days after award. Because Portsmouth considered it essential that all items--except item No. 0005 (spaul clamps)--be received at Portsmouth by January 15, 1979, for transshipment to Scotland, only Polites' offer on item Nos. 0004 and 0005 was considered for award.

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*Contract award
proposal evaluation
solicitation
specification*

Polites item Nos. 0004 and 0005 were determined, after evaluation by Portsmouth of the Polites-submitted samples of its proposed equal items under the brand name or equal requirements in the solicitation, not to be equal to the brand name specified. Portsmouth determined that the toggle bolt was not an integral part of the coupler and was consequently easily susceptible to loss. It was noted that the toggle bolt was also cadmium-plated rather than hot-dipped galvanized as required. Finally, the design characteristics of the toggle bolt were felt to be questionable for reasons of working safety. In summation, it was concluded that the Polites products did not meet the solicitation requirement that "The supplies shall be guaranteed to be equal in all aspects, including performance, interchangeability, durability and quality, to parts [brand name] specified."


Polites contends that the rejection of its items was improper since its couplers are in fact interchangeable, are durable and of acceptable industrial design, and do meet the technical requirements set forth in specification MIL-S-29180 (second draft). Polites further notes that the toggle bolt need not be lost if the nut is on and the bolt is crimped and that the toggle bolt functions in an essentially similar manner to the eye bolt with which the Navy is familiar.

The Department of the Navy noted in its report on the protest to our Office (a copy of which was furnished to Polites for comment) that, among other things, the cadmium-plated items offered by Polites were not considered equal to the hot-dipped galvanized brand name items because it was the technical evaluator's belief that cadmium-plated items would have a shorter life than hot-dipped galvanized items due to the use of these items in a salt water environment where corrosion is a serious problem. Polites offered no specific rebuttal to this determination.

With regard to the argument that the second draft of specification MIL-S-29180 permits cadmium-plated items, we note that the specification was in draft form and not a part of the solicitation specifications.

The overall determination of the technical adequacy of offers/bids is primarily a function of the procuring agency. Therefore, the contracting officer has a reasonable amount of discretion in the evaluation of offers/bids. Harding Pollution Controls Corporation, B-182899, July 3, 1975, 75-2 CPD 17; The BLK Group, Inc., B-178887, April 10, 1974, 74-1 CPD 183. The judgment of the technicians and specialists of the procuring agency as to the technical adequacy of bids or proposals submitted in response to the agency's statement of its needs will generally be accepted by our Office. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44; 52 Comp. Gen. 382 (1972). Such determinations will be questioned by our Office only upon a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of the procurement statutes and regulations. Data 100 Corporation, B-182397, February 12, 1975, 75-1 CPD 89; Ohio State University; California State University, B-179603, April 4, 1974, 74-1 CPD 169. Because Polites has offered no evidence to show the incorrectness of the technical determination regarding cadmium plating, we must accept the determination as made by the agency. Marine Electric Railway Products Co., Inc., B-189929, March 9, 1978, 78-1 CPD 187.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States