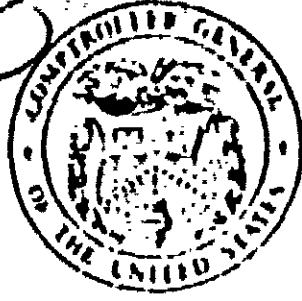


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DECISION



21076
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-204024, B-204024.2 DATE: March 9, 1982

MATTER OF: Precision Piping Incorporated; M & S
Mechanical Corporation

DIGEST:

Even though invitation for bids contains an unduly restrictive definitive responsibility criterion (certification by specific organization), cancellation of the solicitation after bid opening is inappropriate since the protesters were not prejudiced and award will serve the actual needs of the Government.

M & S Mechanical Corporation (M & S) and Precision Piping, Inc. (PPI), protest an alleged defect in and request cancellation of invitation for bids (IFB) No. 6-B-SEA-81 issued by the Science and Education Administration, Department of Agriculture, for the replacement of steam condensate return lines at the Agricultural Research Center, Beltsville, Maryland.

For the following reasons, we sustain the protests.

The alleged defect was contained in section TP 5-02 of the IFB:

"CONTRACTOR QUALIFICATIONS: Any contractor performing work shall be fully qualified and acceptable to the Engineer and must have a current ASME [American Society of Mechanical Engineers] Certification and also hold an ASME 'PP' Stamp for pressure pipe welding. The 'PP' stamp is to be applied to each weld. No 'or equal' certification will be accepted. The Government does not have staff to assure inspection, quality assurance, testing and maintenance of files related to the weld."

Five bids were submitted. The protesters submitted the third and fourth low bids. The low bidder, certified by the American Society of Mechanical Engineers (ASME), was awarded the contract, and the contract apparently has been completed.

The protesters contend that the above provision exceeded the Government's minimum needs and unreasonably restricted competition because other methods of inspection or certification would have satisfied Government needs and the length of time and costs involved in obtaining the requisite certification are prohibitive.

The agency takes the position that unsatisfactory performance historically has resulted from contracts lacking a strict ASME certification provision and that, in this case, the disputed provision was a definitive criterion of responsibility, reasonably calculated to ensure a requisite standard of quality under the contract. Furthermore, the agency points out that 10 firms on the bidders' list possess the certification, and no firm is prevented from obtaining the certification.

We sustain the protests. Our decisions hold that requirements for approval or certification by specific organizations without recognizing equivalents are unduly restrictive. See Pikes Peak Community College, B-199102, October 17, 1980, 80-2 CPD 293; Worcester Electrical Associates, B-193064, April 5, 1979, 79-1 CPD 236. However, because of our discussion below, we are recommending only that the requirement be revised before future use.

Absent competitive prejudice, cancellation of a defective IFB after bids are opened is inappropriate where award would serve the actual needs of the Government. GAF Corporation; Minnesota Mining and Manufacturing Company, 53 Comp. Gen. 586 (1974), 74-1 CPD 68; Hild Floor Machine Co., Inc., B-196419, February 19, 1980, 80-1 CPD 140.

The award to the low bidder possessing the certification clearly served the actual needs of the Government. Further, we find no competitive prejudice

to the protesters since these firms submitted higher bids, which were not based on compliance with the certification requirement.

for Milton J. Fowler
Comptroller General
of the United States



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

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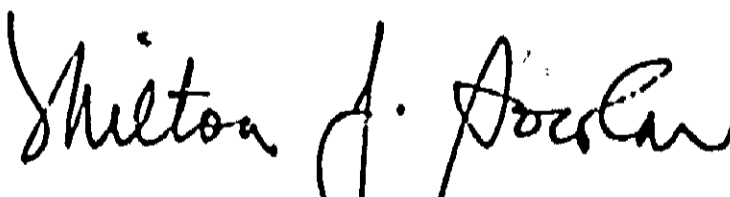
The Honorable John R. Block
The Secretary of Agriculture

Dear Mr. Secretary:

Reference is made to the letter to our Office dated September 18, 1981, from the Chief, Procurement Division, Office of Operations and Finance, which reported on the protests of Precision Piping, Inc., and M & S Mechanical Corporation concerning the solicitation and award of a contract under invitation for bids No. 6-B-SEA-81 issued by the Science and Education Administration.

Enclosed is a copy of our decision of today. We direct your attention to that portion of the decision which concludes that a requirement for bidders to obtain approval or certification from a specific organization without recognizing equivalents is unduly restrictive of competition. We recommend that the requirement be revised before future use. Please advise us of the action taken on our recommendation.

Sincerely yours,

for 
Comptroller General
of the United States

Enclosure