

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

26289

FILE: B-206119**DATE:** September 22, 1983**MATTER OF:** Johnson Controls, Inc.**DIGEST:**

Contracting officer acted reasonably in rejecting proposal for failure to meet experience requirement. Solicitation required offerors to have installed for 12 months similar integrated systems to that proposed. Protester's proposal listed various projects each including some subsystems, but no one project integrating all proposed subsystems in similar setting.

Johnson Controls, Inc. (Johnson Controls), protested the rejection of its offer under request for offer E-34241-40-A, issued by Goodyear Atomic Corporation (GAT), the Department of Energy's (DOE) management/operating contractor for its Oak Ridge Operations, Oak Ridge, Tennessee. The contract is for a Supervisory Control and Data Acquisition (SCADA) system at DOE's Gaseous Diffusion Plant near Portsmouth, Ohio.

We deny the protest.

As a preliminary matter, while we generally do not consider protests of subcontractors, we do consider them where, as here, the prime contractor is operating and/or managing a Government-owned facility. W.H. Mullins, B-207200, February 16, 1983, 83-1 CPD 158. The standard for reviewing the propriety of acquisitions made by prime contractors in this role is the "Federal norm," which means that the prime contractor's procurements must be consistent with and achieve the same policy objectives as Federal statutes and regulations. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10.

Johnson Controls argues that the procurement should have been formally advertised rather than negotiated, that the contracting officer's determination that Johnson Controls did not satisfy the solicitation's prior experience requirement was arbitrary and capricious and that discussions did not notify Johnson Controls that its experience was not adequate.

026702

Concerning whether the procurement was properly negotiated, Johnson Controls' protest was untimely filed. Protests of alleged patent solicitation defects, which this is, must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1983). Since this protest was filed long after that, it is untimely and will not be considered.

Johnson Controls' complaint involves the contracting officer's interpretation and application of the solicitation provision concerning offerors' prior experience, which states, in pertinent part:

"5.1 General

"Due to the system complexity, project importance, and high degree of reliability required, prototype SCADA systems are unacceptable. The Seller shall be an established supplier of SCADA equipment to the electric utility industry as specified in Section 5.2.

"5.2 Seller's Qualifications and Responsibilities

"The Seller shall be capable of demonstrating at least two similar SCADA systems which have been installed and successfully operated by electric utility companies for at least twelve (12) months as of the bid opening date. The similar systems shall be of similar architecture, hardware, and software design. A dynamic graphic mapboard of an electric power system shall be included in the field-proven systems.
* * *

"All individual subsystems and the complete integrated system, both hardware and software, shall be field-proven. At the request of the Purchaser prior to contract award, the Seller shall demonstrate two SCADA systems which have been successfully operating in the field for a period of at least 12 months and which contain equipment similar to that proposed by the Seller. A list of at least two such installations shall be furnished with the Seller's bid."

The GAT contracting officer rejected Johnson Controls' proposal for the following reasons:

- (1) The similar systems listed in Appendix "L" of your proposal, specifically Savannah River and Wabash Power, do not have graphic mapboards.
- (2) The Savannah and Wabash systems have not been installed.
- (3) The Savannah and Wabash systems do not use the RCS-7 Software Package proposed by you.
- (4) The other systems listed in Appendix "L" of your proposal are security and water treatment systems, not electrical switchyard systems.
- (5) The only "utility" SCADA system using the proposed software does not utilize the required hardware.

Johnson Controls contends that the Savannah River and Wabash Power projects were not intended to show compliance with the 12-month installation requirement, but were included to show current experience. As for deficiency (4), the protester argues that it is an overly restrictive interpretation of the similar systems requirement. According to Johnson Controls, it transforms a requirement for experience in similar systems to a requirement for experience in identical systems. Johnson Controls argues that its listed installed systems are similar in enough of the basic functions of the required system to qualify under section 5.2 of the solicitation. The protester contends that these similar functions are sufficient no matter whether the system is used in a wastewater plant or an electrical switchyard. Specifically, Johnson Controls maintains that its Wisconsin Electric Power, Oak Creek project fulfills the requirement.

In reviewing a contracting officer's judgment as to whether an offeror's experience is sufficient to meet a solicitation requirement such as the one in this case, our Office grants the contracting officer broad discretion in determining what constitutes an acceptable degree of similarity and what evidence satisfies the requirement.

See e.g., Vector Engineering, Inc., B-200536, July 7, 1981, 81-2 CPD 9; Westinghouse Air Brake Company, B-191537, February 15, 1979, 79-1 CPD 109.

GAT contends that the solicitation requires two installed systems which contain all of the listed functions in a similar setting. According to GAT, Johnson Controls' proposal, including modifications submitted in response to discussions, admit that none of the listed systems contains all of the requirements, and that none do so in a similar setting. GAT points to the following specific language in Johnson Controls' proposal in support of its conclusion:

"All of the elements of the system proposed have met the time proven dependability criteria - though not all within the same project or type.

"As is evident, an entire system containing all of the elements proposed is not available in any one electric utility."

GAT also points out that the software proposed by Johnson Controls had never been used in a dual central processor system as required here.

We find that the contracting officer's reading of the solicitation as requiring demonstration of integrated systems containing all of the listed functions in a similar setting is reasonable. The clause specifically refers to "complete integrated system[s]" and to "systems" with specifically listed functions. Johnson Controls admits that none of its listed projects contain all of the required elements in an integrated system. Having a number of the subsystems installed in a variety of types of projects does not satisfy the requirement that the "system" proposed be previously demonstrated. The "system" clearly means all of the elements together as a unit. Also, we find that the contracting officer's interpretation of the solicitation as requiring experience in a similar setting is reasonable. Consequently, the contracting officer's rejection of Johnson Controls' proposal was reasonable.

Concerning alleged deficiencies in discussions, the record shows that Johnson Controls was advised of deficiencies in its experience listings, and did, in fact,

modify its proposal in response. In any event, the experience clause requires that the systems have been installed for 12 months as of the closing date. Johnson Controls does not argue that it had systems meeting the requirement or systems that would have met the 12-month requirement at any time prior to award. Therefore, any problems with discussions could not have prejudiced it in this regard.

for *Milton J. Fowler*
Comptroller General
of the United States