

DECISION



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

FILE: B-216014

DATE: December 13, 1984

MATTER OF: Astronautics Corporation of America

DIGEST:

1. IFB requirement that bidders prove that they have specific specifications and drawings and show that their products are interchangeable with existing government-owned equipment relates to the bidders' ability to perform, i.e., responsibility, which may be determined on the basis of information submitted after bid opening, rather than bid responsiveness.
2. Since the Small Business Administration has conclusive authority to determine a small business responsible, GAO will not review a contracting agency's decision that a small business is nonresponsible.

Astronautics Corporation of America (ACA) protests the possible award of a contract to Aeronautical Instrument and Radio Company (AIRCO), the low bidder under invitation for bids (IFB) No. DAAB07-84-B-F164, issued by the United States Army Communications - Electronics Command (Army), Fort Monmouth, New Jersey, for horizontal situation indicators for the Black Hawk Helicopter. ACA argues that AIRCO's bid is nonresponsive and that AIRCO is not a responsible bidder.

We deny the protest in part and dismiss the remainder.

The IFB contained the following clause entitled "OTHERWISE RESTRICTED":

"This procurement is limited to bidders having complete specifications, including all drawings and technical data for either Astro-nautics Corp. Part No. 132750 or Bendix Corp. Part No. 3809393-5. Complete interchangeability in the form, fit and function of the item within existing Government owned equipment is required. Bidders will be required to prove that they meet the above requirements. This is required as the Government

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does not have sufficient technical information to evaluate an "or equal" item. The Government reserves the right to award a Contract based solely on the lowest proposed price received from a responsible bidder without further discussions or negotiation."

ACA contends that AIRCO's bid is nonresponsive because: (1) AIRCO did not possess the complete specifications, including all drawings and technical data for either ACA Part No. 132750 or Bendix Corp. Part No. 3809393-5 as required by the IFB at the time it submitted its bid; (2) AIRCO allegedly has not proven that its products would have complete interchangeability in the form, fit, and function of the item within existing government-owned equipment; and (3) AIRCO allegedly does not have Sikorsky drawing 70450-10140, Rev. H and Sikorsky Spec. SES 701021.

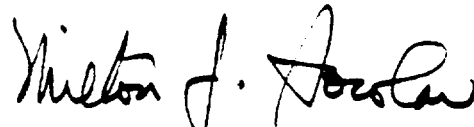
AIRCO states that at this time, it has all specifications, including drawings and technical data, to perform in accordance with the IFB.

We do not agree with the protester that AIRCO's alleged failure at bid opening to prove that it met the above requirements rendered its bid nonresponsive. We believe that these requirements relate to the bidder's responsibility--its ability to perform in accordance with the IFB, and not to responsiveness, which concerns whether a bidder has unequivocally offered to provide services or supplies in conformity with the material terms and conditions of the solicitation. See Jimmie Muscatello's Military and Civilian Tailors, B-211578, Sept. 29, 1983, 83-2 C.P.D. ¶ 390. We also disagree with ACA's contention that the above-mentioned requirements relate to the product to be supplied (responsiveness) instead of the bidder's ability to perform. In addition, the relevant solicitation clauses do not contain language stating that bids not evidencing conformance with its terms would be rejected, one of the traditional elements of a responsiveness-type requirement. See F.C. Campbell, Inc., B-203581, Oct. 9, 1981, 81-2 C.P.D. ¶ 295. We conclude that AIRCO's bid, which indicated compliance with all the solicitation's requirements, without exception, was properly determined to be responsive.

In addition to the responsiveness argument, ACA argues that for a number of other reasons, AIRCO could not perform in accordance with the solicitation terms and meet its

delivery schedule. The contracting officer, after reviewing AIRCO's preaward survey, which recommended that no award be made to AIRCO, determined AIRCO to be nonresponsible. Therefore, this issue is academic. Nevertheless, since AIRCO is a small business, the matter of AIRCO's responsibility has been referred to the Small Business Administration (SBA) for the possible issuance of a certificate of competency (COC). Because the SBA has conclusive authority to determine a small business responsible by issuing a COC (15 U.S.C. § 637(b)(7)(A) (1982)), this Office will not review this matter. Singleton Contracting Corp., B-212504, Aug. 15, 1983, 83-2 C.P.D. ¶ 214.

The protest is denied.

for 
Comptroller General
of the United States