



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: MRI Mechanical Contractors

File: B-224170, B-224172

Date: December 24, 1986

DIGEST

1. The General Accounting Office dismisses a protest alleging that a specification limiting the methods that may be used to repair metal welds is unduly restrictive when the protester admittedly can satisfy this requirement and will be competing on an equal basis with bidders who must meet the same specification.

2. Contention that solicitation is defective because additional work not contemplated by the parties will have to be performed is denied where the only evidence of the need for such work consists of the conflicting statements of the protester and the contracting activity.

3. Issue that protester could have raised in its initial submission, but did not raise until it submitted comments on a bid protest conference, is dismissed. The Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation of protest issues.

DECISION

MRI Mechanical Contractors protests the terms of two solicitations issued by the National Aeronautics and Space Administration (NASA), Langley Research Center, Hampton, Virginia. MRI primarily contends that a provision included in both solicitations requiring that the work be performed with a particular tool is arbitrary and unduly restricts competition. We dismiss the protests in part and deny them in part.

Both solicitations encompass the repair of numerous specified welds in high pressure piping systems. The first invitation for bids, No. 1-056-5628.0279, issued on August 14, 1986, covers the repair of more than 400 welds at one center complex, while the second, No. 1-056-5628.0280, issued the next day, involves the repair of more than 300 welds at the center's west area distribution system. In performing this

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work, the contractor must first remove existing welds. As issued, the solicitations specified that these were to be "ground out" or removed by "grinding." In response to a letter from MRI seeking clarification of these provisions, NASA amended both IFBs to provide that all references to "grind out" or "grinding" should be defined to mean "the removal of metal by means of a rotating wheel containing abrasives."

In its protest, which has caused NASA to postpone bid opening indefinitely, MRI contends that grinding wheels are neither the most economical nor effective method available to remove existing welds. Air arc gougers, MRI continues, can be used to perform this work safely and more efficiently. Accordingly, MRI concludes that the specifications are not only arbitrary but also exceed the agency's minimum needs, and therefore unduly restrict competition.

NASA justifies the requirement that grinding wheels be used on the basis that alternative methods would not satisfy its safety concerns, given the cramped working conditions for this job. The agency further responds that the air arc method could result in large globules of molten metal being blown as much as 20 feet from the work site, endangering personnel, starting fires, or melting insulation on nearby cabling and electronic equipment.

Under the Competition in Contracting Act of 1984, we consider protests by interested parties. 31 U.S.C. § 3553(a) (Supp. III 1985). An interested party is defined as an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." 31 U.S.C. § 3551(c); 4 C.F.R. §§ 21.0(a), 21.1(a) (1986).

Here, MRI acknowledges that any firm, including itself, with expertise in this field has the capability to do the work in accord with the amended solicitations. Moreover, while arguing commercial impracticability, MRI has not shown that the requirement for use of grinding wheels places it at a competitive disadvantage vis a vis other bidders who also will be required to use grinding wheels. Accordingly, we find that MRI is not an interested party with respect to this issue. See Superior Boiler Works, Inc., B-216472, Mar. 25, 1985 85-1 CPD ¶ 342. We dismiss the protest on this basis.

MRI also contends that the specifications are defective, since a number of the designated welds cannot be repaired in place with a grinding wheel. To demonstrate this point, MRI

furnished NASA with a list of 71 welds that it alleges fall within this category. NASA responds that the contractor may have to perform certain preparatory tasks before repairing a particular weld. MRI asserts that in many cases this preparation involves the removal of pipe sections containing a designated weld, a process that often entails the making of new pipe cuts. MRI states that where a new cut is required, the contractor will incur additional costs because the time needed to repair a designated weld will increase by approximately 100 percent. NASA states, however, that the pipe section can always be freed by cutting the pipe at an adjacent weld which also is designated for repair. This procedure, NASA maintains, requires minimal effort and thus is merely incidental to the work specified in the solicitations. Whether the making of new pipe cuts is actually required, in our opinion, is a matter to be determined during performance of the contract. As such, it involves contract administration, and we will not consider it. 4 C.F.R. § 21.3(f)(1).

Finally, in its comments on the bid protest conference, MRI alleges for the first time that the solicitations are ambiguous in that they do not specify what tool may be used when the contractor cuts the pipe in order to remove and repair it. We could not evaluate this argument absent a supplemental report from the agency, and in any event, we find this basis of protest untimely. A protester may not introduce a new issue in its comments that it could and should have raised in its initial submission to our Office. Our Bid Protest Regulations 4 C.F.R. Part 21, do not contemplate the unwarranted piecemeal presentation of protest issues. See LaBarge Products, 64 Comp. Gen. 828 (1985), 85-2 CPD ¶ 270.

The protests are dismissed in part and denied in part.


Harry R. Van Cleve
General Counsel