



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of:       A&B Electric Corp.  
File:             B-226289.3  
Date:             April 23, 1987

---

## DIGEST

1. Affirmative determinations of responsibility are not reviewable by General Accounting Office absent a showing of possible fraud or bad faith on the part of contracting officials or that definitive responsibility criteria in the solicitation may not have been met. A solicitation requirement that the contractor use personnel with certain stated qualifications is not a definitive responsibility criterion, but rather a performance specification.
2. Protest after bid opening that solicitation's wage rates were incorrect is untimely.

---

## DECISION

A&B Electric Systems Corp. contends that the bids of Center Electric Inc. and Specialty Electric Co., Inc. submitted under invitation for bids (IFB) No. GS-11T87MKC0002U, issued by the General Services Administration (GSA) for electrical work should be rejected. A&B maintains that neither firm has the required qualified personnel. The protester also argues that GSA officials indicated at a pre-bid meeting that the solicitation would be amended to correct an alleged wage rate imbalance between union and non-union firms but that no amendment was issued. We dismiss the protest.

The solicitation requires that the contractor have an established reputation (or if a newly organized firm, personnel with established reputations) in asbestos abatement and that employees assigned to active asbestos work areas be currently registered with the Maryland Department of Health and Mental Hygiene as trained asbestos workers. Further, the contractor is required to submit a list of employees certified for asbestos work. A&B contends that neither Center Electric or Specialty Electric have personnel licensed or experienced in electrical work in active asbestos areas.

The protester does not allege that Center Electric or Specialty Electric took exception to any personnel qualification requirements in their bids, which therefore appear to be responsive. Satellite Services, Inc., B-219679, Aug. 23, 1985, 85-2 CPD ¶ 224. A firm's ability and capacity to perform all of the contract requirements involves its responsibility. Bay Decking Co., Inc., B-216248, Jan. 22, 1985, 85-1 CPD ¶ 77. By awarding any contract, the contracting officer necessarily finds a firm to be a responsible prospective contractor. Sylvan Service Corp., B-219077, June 17, 1985, 85-1 CPD ¶ 694. We do not review affirmative determinations of responsibility absent a showing of possible fraud or bad faith on the part of contracting officials or that definitive responsibility criteria in the solicitation may not have been met. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1986); Satellite Services, Inc., B-219679, supra.

Neither exception is applicable here. First, A&B has not alleged bad faith or fraud on the part of contracting officials or that any definitive responsibility criteria have not been met. In this respect, the personnel qualification requirements in the solicitation here, which are worded prospectively and which state how and by whom the work is to be accomplished, are performance requirements and are to be distinguished from definitive responsibility requirements which are preconditions to award. See Markhurd Aerial Surveys, Inc., B-210108, Jan. 17, 1983, 83-1 CPD ¶ 51.

Finally, A&B's contention that the solicitation should have been amended to require higher wages for non-union firms is untimely. Our regulations require that a contention such as this, which is based on an alleged impropriety (an incorrect wage rate) in the solicitation that is apparent prior to bid opening, must be filed prior to that time. 4 C.F.R. § 21.2(a)(1); NJCT Corp., B-219455, July 22, 1985, 85-2 CPD ¶ 70. A&B says that it raised this issue at a pre-bid meeting but when no amendment was issued it had no choice but to bid and then protest. Nonetheless, A&B does not contend that it protested this issue prior to bid opening and we see no reason why it could not have protested the wage rates before bids were opened and prices exposed.

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel