



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: BBC Brown Boveri, Inc.

File: B-227903

Date: September 28, 1987

DIGEST

1. Solicitation requirement that successful bidder have a service organization that has 5 years of specified experience relates to the bidder's responsibility, not the responsiveness of its bid; evidence that the bidder has the required organization may be provided anytime prior to award.
2. Contention that definitive responsibility criterion requiring 5 years of experience in polychlorinated biphenyl (PCB) servicing was not met is without merit where the contracting officer reasonably could conclude from material presented after bid opening that the bidder and its proposed subcontractor had 5 years of experience removing PCB-filled transformers, which is exactly the type of work being procured.

DECISION

BBC Brown Boveri, Inc., protests the proposed award of a contract to the Ryan Company, Inc., under invitation for bids (IFB) No. 5-05775/072, issued by the National Aeronautics and Space Administration's Goddard Space Flight Center, Greenbelt, Maryland. We deny the protest.

The IFB sought bids for two separate items involving polychlorinated biphenyl (PCB) transformers. Item No. 1 required the removal of seven PCB-filled transformers and their replacement with new equipment at building No. 7 at Goddard. Item No. 2 required work on 23 transformers at numerous other buildings at Goddard. Only item No. 1 is involved in this protest. The solicitation as amended provided that the agency would calculate prices for evaluation purposes using a formula that would take into account the efficiency ratings of the replacement

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transformers. Under this formula, Ryan was the low evaluated bidder for item No. 1; the protester was second low.^{1/}

The protester contends that the agency should not award a contract to Ryan for item No. 1 because that firm allegedly has failed to demonstrate compliance with clause M-3 of the IFB, which provides as follows:

"M-3 Experience

The Contractor shall have a service organization that has been involved in PCB servicing for at least 5 years. The Contractor shall also possess service facilities that routinely handle, store, and repair PCB equipment according to Environmental Protection Agency (EPA) regulations. Documentation which demonstrates at least 5 years experience as specified in Paragraph 2.2 of the specifications must be submitted with the bid."

(Paragraph 2.2 of the specifications contained the same 5-year experience requirement and also provided that a prospective contractor must have "extensive experience in transformer design, manufacture and service.") Clause M-5 of the IFB stated that incomplete bids "may be determined nonresponsive."

Ryan indicated in its bid that PCB handling services would be accomplished through a subcontract with Sunohio/Retrotex Division. The bid included material demonstrating that Retrotex had experience in the removal and replacement of PCB transformers, but none of the projects listed had been accomplished prior to 1985. On this basis, the protester argues that Ryan's bid is nonresponsive.

After bid opening, and at the contracting officer's request, Ryan confirmed by letter dated June 30 that it would use Sunohio as its PCB subcontractor and that an agreement to that effect existed between the two companies. Accompanying Ryan's letter to the contracting officer was a list on Sunohio/Retrotex Division stationery of several PCB-related contracts apparently performed by Sunohio in 1981 and 1982. By letter of July 6, Ryan also provided the contracting officer with a list of contracts performed by that firm, all of which Ryan said involved the removal of PCB transformers as well as other work. The earliest project on that list

^{1/} The protester was the low evaluated bidder, and is in line for award, under item No. 2. The IFB allows for multiple awards.

was a contract in March 1981, involving an upgrade to the primary distribution system at the Fernald State School in Waltham, Massachusetts. Finally, by letter of July 8, Sunohio provided the contracting officer with a partial list of its PCB-handling contracts dating back to 1981.

The protester contends that this additional material fails to demonstrate compliance with the 5-year PCB servicing experience requirement. First, the protester contends that there is no indication in the material that Ryan itself has any experience handling PCBs. With respect to Sunohio, the protester acknowledges that the firm has more than 5 years of experience in PCB disposal, but argues that the term "PCB servicing" contained in the IFB contemplates more than just disposal experience.^{2/} In any event, argues the protester, it is the Retrotex Division of Sunohio, not Sunohio as a whole, that Ryan will use as its PCB subcontractor. Retrotex is a separate corporate entity, says the protester, that has only 2 years experience in the type of work required under the IFB. Finally, the protester argues that the contracting officer should have conducted a "detailed examination" to determine whether the prior contracts listed by Ryan and its proposed subcontractor evidenced compliance with the 5-year experience requirement.

The agency agrees with the protester that the term "PCB servicing" as used in the IFB was intended to embrace more than just draining PCB transformers and disposing of the PCBs. The agency reports that it contemplated that the successful bidder would have a service organization with 5 years experience in performing the work on the PCB transformers required by the solicitation. With respect to item No. 1, the IFB required removal of the PCB transformers (drained first, if necessary) from Building No. 7 and replacement of these units with dry-type transformers. The agency contends that the 5-year PCB-servicing requirement has been satisfied in this case.

We find no basis on which to conclude that Ryan's bid was nonresponsive. The 5-year experience requirement relates to the question of whether the bidder's service organization has enough experience with PCBs to be able to perform this contract satisfactorily. This is an issue of bidder

^{2/} The protester suggests that "PCB servicing" is defined in the sentence of paragraph 2.2 of the specifications immediately following the 5-year experience requirement, which reads: "The contractor shall also possess service facilities that routinely handle, store and repair PCB equipment according to EPA regulations."

responsibility rather than bid responsiveness. Bender Shipbuilding & Repair Co., Inc., B-225578, Apr. 10, 1987, 87-1 CPD ¶ 398. Even though the solicitation provided that a bidder's failure to submit with its bid evidence of compliance with this requirement would render the bid non-responsive, such a solicitation provision is not effective to convert a matter of responsibility into one of responsiveness. The ARO Corp., B-222468, June 25, 1986, 86-2 CPD ¶ 6. Information concerning a prospective contractor's responsibility may be submitted anytime prior to award.

Because a contracting agency's determination that a particular bidder or offeror is responsible is based in large measure on subjective judgments, this Office generally does not review affirmative responsibility determinations. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1987). One exception to this rule is where a solicitation contains one or more definitive responsibility criteria, which are specific, objective standards established by an agency to measure a bidder's or offeror's ability to perform the contract. Nations, Inc., B-220935.2, Feb. 26, 1986, 86-1 CPD ¶ 203. A solicitation requirement that the prospective contractor have a specified number of years of experience is such a criterion. Topley Realty Co., Inc., 65 Comp. Gen. 510 (1986), 86-1 CPD ¶ 398. Where, as here, an allegation is made that a definitive responsibility criterion has not been satisfied, we will review the record to ascertain whether sufficient evidence of compliance has been submitted such that the contracting officer reasonably could conclude that the definitive criterion has been met. Id.

Here, there is no merit to the protester's position. First, both parties agree that "PCB servicing" means more here than just draining and disposing of PCBs. We concur with the agency that, as used in this context, the term contemplates experience doing the type of PCB-related work required under the solicitation; that is, the removal of PCB-filled transformers. With respect to Ryan, the contracting officer observed that Ryan had listed a number of contracts performed by the firm involving the removal of PCB transformers, the earliest of which was the Fernald State School project in 1981. From this, we believe the contracting officer reasonably could conclude that Ryan satisfied the 5-year experience requirement as far as the actual removal of the transformers was concerned.

Further, the evidence before the contracting officer also was sufficient to indicate that Ryan's subcontractor, the Retrotex Division of Sunohio, satisfied the 5-year requirement concerning the removal of PCB transformers and the

disposal of the PCBs.^{3/} The material presented to the contracting officer after bid opening listed several contracts performed by Sunohio in 1981 and 1982 involving the removal, as well as the disposal, of PCB transformers. We find no indication from this material that Sunohio's experience has been limited to disposal of PCBs.

It thus appears that the record reasonably supports the agency's finding that Ryan and its subcontractor possess the required experience level in performing the tasks set forth under item No. 1 of the solicitation. In this respect, the relative quality of evidence submitted to show compliance with a definitive responsibility criterion, and the extent that further investigation may be required, are matters for the contracting officer to determine, not this Office. See Urban Masonry Corp., B-213196, Jan. 3, 1984, 84-1 CPD ¶ 48.

The protest is denied.

for Seymour S. Hsu
Harry R. Van Cleve
General Counsel

^{3/} Although the protester takes the position that the Retrotex Division will perform the subcontract with Ryan as a corporate entity separate and apart from other Sunohio units, this position is not supported by the record. The protester has provided us with a copy of a Dun & Bradstreet report indicating that the former Retrotex, Inc., "merged into" the Sunohio Company in 1986, and that it now operates as a division of that concern. In addition, the agency reports being informed by Sunohio that its divisions do not have independent contracting authority and that any contract must be with the Sunohio Company.