



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Noah Howden, Inc.
File: B-227979
Date: October 22, 1987

DIGEST

Solicitation requirement that fan assemblies incorporate a component obtained from specified approved sources is not a definitive responsibility criterion. The specification requirement is related to the bidder's general ability to perform the contract, so that the ability to comply is encompassed by the contracting officer's subjective responsibility determination.

DECISION

Noah Howden, Inc., protests the award of a contract to Ronal Industries, Inc., under invitation for bids (IFB) No. DAAE07-86-B-B403 issued by the United States Army Tank-Automotive Command (TACOM) for ventilating fan assemblies. Noah contends that Ronal will not supply fan assemblies with components from an approved source as required by the IFB.

We deny the protest.

The IFB required manufacture of the fan assemblies in accordance with a technical data package, which included a drawing for Part No. 12269363. That drawing indicated that the part was restricted to three approved sources of supply (FMC Corp., Airscrew Howden, Ltd., and Noah) and that substitute items could not be used without prior testing and approval by TACOM. The IFB also advised that firms could submit bids conditioned upon acceptance by the government of alternatives to the source-controlled components listed in the technical data package.

None of the three bids responding to the IFB took any exceptions to the solicitation's requirements; thus, all were considered responsive. Based upon a preaward survey recommending contract award to Ronal, the low bidder, the contracting officer found Ronal responsible, and awarded the firm a contract. The second low bidder was Defense Systems, Inc., and Noah was the third low bidder.

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Noah challenges TACOM's affirmative determination of responsibility, contending that the requirement that the contractor provide a ventilating fan incorporating a part from an approved source is a definitive responsibility criterion, the misapplication of which is reviewable by our Office. Noah argues that neither Ronal nor Defense Systems will be able to provide Part No. 12269363 in accordance with the IFB's requirements because neither received the required final written approval of its part from TACOM prior to bid opening, and neither obtained a commitment for the part from the only approved source available, namely Noah. In this regard, the protester maintains that only Noah can provide the part because its sister company, Airscrew Howden, Inc., the second approved source, does not sell Part No. 12269363 in the United States, and FMC Corp., the third approved source, does not manufacture the part as a subcontractor.

TACOM responds that the contract award was proper because Ronal unequivocally offered to provide a product that conformed to the specifications and took no exceptions to the IFB requirements. Consequently, TACOM states, Ronal has obligated itself to perform in accordance with the specifications. Additionally, TACOM argues that whether Ronal actually provides a product conforming to the contract requirements is a matter of contract administration, which is the responsibility of the contracting agency, not our Office.

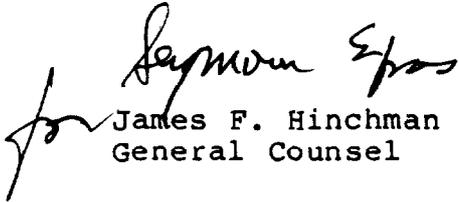
Our Office will object to an agency's determination that a bidder is responsible only if a protester shows that the agency acted in bad faith or misapplied a definitive responsibility criterion. 4 C.F.R. § 21.3(f)(5) (1987). A definitive responsibility criterion is an objective standard established by an agency for a particular procurement for measuring a bidder's ability to perform the contract. Nations, Inc., B-220935.2, Feb. 26, 1986, 86-1 C.P.D. ¶ 203. In effect, the criterion represents the agency's judgment that a bidder's ability to perform in accordance with the specifications for that procurement must be measured not only against traditional and subjectively evaluated factors, such as adequate facilities and financial resources, but also against a more specific requirement, compliance with which at least in part can be determined objectively. Id.

On the other hand, the bidder's ability to meet specification requirements concerning the product to be furnished is encompassed by the contracting officer's subjective responsibility determination. Zero Manufacturing Co.--Request for Reconsideration, B-224923.2, Oct. 28, 1986, 86-2 C.P.D. ¶ 485. For example, a specification requirement that components shall be "standard products" is only a

performance requirement--it requires the contractor to furnish an end product that has such components. Id. The component requirement is not a definitive responsibility criterion. See C.R. Daniels, Inc., B-221313, Apr. 22, 1986, 86-1 C.P.D. ¶ 390.

The requirement that Part No. 12269363 be obtained from an approved source and incorporated in the fan assemblies is a requirement that, as far as the ability to meet it is concerned, is encompassed by the contracting officer's subjective responsibility determination. As stated above, based on the results of the preaward survey and the recommendation of award, the contracting officer determined that Ronal was responsible. The protester has made no showing of fraud or bad faith on the part of TACOM and, as discussed, the solicitation did not establish the component requirement as a definitive responsibility criterion. While the issue of whether Ronal ultimately provides fan assemblies with the required component from an approved source is a matter of contract administration, and thus is not for consideration under our bid protest function, 4 C.F.R. § 21.3(f)(1), we have received TACOM's assurance that it will strictly enforce the contract requirement that Ronal provide the part from approved sources.

The protest is denied.


James F. Hinchman
General Counsel