



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ibex Ltd.
File: B-230218
Date: March 11, 1988

DIGEST

Bidders' alleged intent to supply materials that do not comply with the specifications does not render their bids nonresponsive. Only where a bidder provides information with its bid that reduces, limits, or modifies a solicitation requirement may the bid be rejected as nonresponsive.

DECISION

Ibex Ltd. protests the award of a contract to any firm other than itself under invitation for bids (IFB) No. DABT15-88-B-0010, issued by Directorate of Contracting, Ft. Benjamin Harrison, Indiana for heat recovery systems and ductwork.

The IFB required a "heat pipe" type heat recovery system and ductwork constructed of 304 stainless steel, minimum 18 gauge. Ibex alleges that the bids of General Piping, Peine Engineering, and Ellis Corp. were nonresponsive because their bids failed to materially comply with the specifications because they were not based on the "heat pipe" type system and ductwork required. Ibex asserts that it was informed of this fact by an equipment dealer in the area. The firm seeks award to itself.

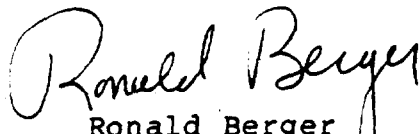
Bid responsiveness concerns whether a bidder has unequivocally offered to provide supplies in conformity with all material terms and conditions of a solicitation. Only where a bidder provides information with its bid that reduces, limits, or modifies a solicitation requirement may the bid be rejected as nonresponsive. The ARO Corp., B-225727, June 15, 1987, 87-1 CPD ¶ 595. Responsibility, on the other hand, refers to a bidder's apparent ability and capacity to perform all contract requirements and is determined not at bid opening, but at any time prior to award based on any information received by the agency up to that time. Great Lakes Dredge & Dry Dock Co., B-221768, May 8, 1986, 86-1 CPD ¶ 444.

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The protester does not allege that any of the three lower bidders took exception in their bids to the requirements of the specification in the IFB. Thus, those bidders, if awarded the contract, would be obligated to provide material in conformity with the solicitation, and the bids, therefore, were responsive. Indeed, the Ellis Corporation acknowledges this in correspondence to us which states, "Our past experience with the Army has been you either provide equipment and material as per specification or your submissions would be rejected."

Before an award can be made, however, the contracting officer must make an affirmative determination of responsibility. See Federal Acquisition Regulation § 9.105-2(a)(1) (1987). Whether a bidder intends to furnish what it has committed itself to furnish is appropriate for consideration in determining the responsibility of the bidder. Our Office does not review a contracting officer's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of government officials. The ARO Corporation, B-222486, June 25, 1986, 86-2 CPD ¶ 6. No such showing has been made here.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel