



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Schlumberger Industries
File: B-232608
Date: December 27, 1988

DIGEST

1. Contracting agency properly found protester's bid to be nonresponsive where it did not comply with the terms and conditions of the invitation for bids. Protester is not permitted to correct and explain its nonresponsive bid after bid opening.
2. Bid properly found to be nonresponsive at bid opening may not be made responsive by subsequent additions or corrections since responsiveness is determined as of bid opening.
3. Protester who submitted a nonresponsive bid is not an interested party to challenge responsiveness of awardee's bid since, even if the protest were sustained, the protester would not be in line for award.
4. Protest that awardee may not comply with the Buy American Act involves a matter of contract administration and is not for consideration under General Accounting Office's bid protest function.
5. Protest that specifications in invitation for bids are unduly restrictive of competition is untimely where it is not filed before bid opening date.

DECISION

Schlumberger Industries protests the award of a contract to Yarway Corporation under invitation for bids (IFB) No. HC-35946C, issued by the Tennessee Valley Authority (TVA) for a drum level indicator transmitter system at the Shawnee

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Fossil Plant, a TVA electric-generating plant.^{1/} Schlumberger principally argues that TVA improperly rejected its bid as nonresponsive and that Yarway's bid was nonresponsive. We deny the protest in part and dismiss it in part.

The equipment being procured is to be used to monitor water levels in boiler drums at the Shawnee Fossil Plant. According to TVA, the boiler drums are enclosed metal drums over 50 feet long filled with pressurized heated water and steam. The steam is drawn from the upper part of the drums and used to propel turbines for the generation of electricity. TVA states that the water level in each drum must be constantly monitored and maintained within a certain range because a water level that is either too high or too low can cause catastrophic equipment failure.

The IFB calls for an electronic water level indicator system which relies on a series of detector probes spaced vertically along the operating water level range to determine the precise water level. The probes are connected by electrical cable to electronic circuitry, contained in a separate enclosure remote from the probes and drums, which receives and processes the signals from the probes. The circuitry then transmits the processed signal to a third component, the readout or indicator unit from which plant personnel may determine the water level.

The IFB was issued on June 13, 1988, with bids due on July 13. Four bids were received. Schlumberger was the lowest priced bidder (\$185,000), Yarway the second lowest (\$190,000). TVA examined Schlumberger's bid and found it nonresponsive on three grounds: (1) the bid specified a maximum distance of 30 feet between the electrodes and the electronics, not the 350 feet required by the IFB; (2) Schlumberger's probe used a gasket seal, while the IFB required a gasketless probe; and (3) Schlumberger did not explain the method to be used to prevent the occurrence of

^{1/} While TVA contends our office does not have jurisdiction to consider this protest, we have considered and rejected this contention in prior cases. Monarch Water Systems Inc., 64 Comp. Gen. 756 (1985), 85-2 CPD ¶ 146. TVA is subject to the procurement procedures in the Federal Property and Administrative Services Act and the Federal Acquisition Regulation, absent a determination to the contrary by the TVA Board. Newport News Industrial Corp. et al., B-220364, Dec. 23, 1985, 85-2 CPD ¶ 705. There is no indication that such a determination was made here.

repeated alarm-reset-alarm sequences as called for by the IFB.

The responsiveness of a bid must be determined from its face at bid opening, and it may not be changed or corrected on the basis of explanations offered by the bidder after bid opening. Freedom Elevator Corp., B-228887, Dec. 7, 1987, 87-2 CPD ¶ 561. To be responsive, a bid must reflect an unequivocal offer to provide the exact product or service called for in the solicitation so that its acceptance will bind the contractor to perform in accordance with the material terms and conditions of the IFB. Community Metal Products Corp., B-229628, Jan. 15, 1988, 88-1 CPD ¶ 41. In this case, we find that TVA properly concluded that Schlumberger's bid was nonresponsive because it failed to comply with the IFB requirements for distance between the electrodes and electronics; gasketless probes; and methods to prevent repeated alarm-reset-alarm sequences.

Distance Between Electrodes and Electronics

The IFB requires the detection electronics unit to be placed a minimum of 350 feet from the water column assembly in which the probes are mounted. According to TVA, the area near the boiler drums is a harsh environment containing large quantities of coal dust and temperatures sometimes exceeding 150 degrees. TVA states that a minimum distance of 350 feet between the electrodes and the electronics units is required to permit the electronic units to be opened for service without being contaminated by coal dust and to reduce service personnel's exposure to excessive heat and dust-fouled air. Because Schlumberger's bid states there will be 30 feet of cable between its water column assembly and the detection electronics unit, and not a minimum of 350 feet as required by the IFB, TVA properly determined the protester's bid to be nonresponsive.

To the extent that Schlumberger now challenges TVA's need to place the units at least 350 feet apart, the protest is untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), provide that protests based on alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to that date. Here, the IFB was clear on its face that the minimum distance required between the two units was 350 feet and neither the protester, nor any other bidder questioned this requirement before bid opening.

Gasketless Probes

The IFB requires that the detector probes have a gasketless seal to the water column which is easily replaceable in the field. Because the protester offered a probe with a gasket seal, TVA found its bid nonresponsive to this requirement. Schlumberger argues that a gasketed probe is a minor deviation from the IFB requirements which TVA should waive. We find this argument to be without merit.

TVA explains that the use of gasketed probes would not meet its minimum needs because conditions at the Shawnee facility, such as frequent boiler shutdowns and startup with accompanying thermal stress, could result in gasket failure requiring additional maintenance. TVA also states that gasketed probes have more threaded nuts requiring adjustment by maintenance personnel than do gasketless probes, and since there are over 360 separate probes each requiring individual attention, the need for additional personnel could be significant.

A deficiency or deviation which goes to the substance of a bid by affecting price, quality, quantity or delivery of the article offered is a material deviation that requires the bid to be rejected as nonresponsive. Community Metal Products Corp., B-229628, Jan. 15, 1988, 88-1 CPD ¶ 41. Here, allowing Schlumberger to substitute a gasketed probe for the gasketless probe required by the IFB clearly would be a material deviation, since it would affect the quality of the probe and result in additional maintenance. Accordingly, TVA properly determined that Schlumberger's bid was nonresponsive because it offered a gasketed probe.

Preventing Repeated Alarm-Reset-Alarm Sequences

According to TVA, detection systems usually include automatic warning alarms to alert the unit operator when the drum water level passes predetermined limits. TVA states that while sometimes the water passing the limits indicates a problem requiring correction by the operator, at other times the water is basically within an acceptable level and simply makes periodic minor fluctuations past the alarm level, causing repeated alarms which do not reflect actual problems with the water level. To avoid this, the IFB requires that bidders describe the methods used to prevent the occurrence of repeated alarm-reset-alarm sequences.

Because Schlumberger's bid was silent on this requirement, TVA properly rejected Schlumberger's bid as nonresponsive. While Schlumberger explains how it can satisfy this requirement in its protest, a post-bid opening explanation

is unacceptable and cannot be used to cure a nonresponsive bid. See Freedom Elevator Corp., B-228887, supra.

Yarway's Bid

Schlumberger also alleges that Yarway's bid was nonresponsive to various IFB requirements and, therefore, award to it was improper. In view of our decision that Schlumberger's bid properly was determined nonresponsive, the protester is not an interested party to raise this issue.

Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(2) (Supp. IV 1986), and our regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a), a protest may be brought by only an interested party, defined as an actual or potential bidder or offeror whose direct economic interest would be affected by the award or failure to award the contract at issue. In general, a party will not be considered interested where it would not be in line for award even if its protest were sustained. See All Clean, Inc., B-228608, Aug. 12, 1987, 87-2 CPD ¶ 154.

Here, since Schlumberger's bid was determined nonresponsive and there are two other bidders which could be considered for award if Yarway's bid was found nonresponsive, Schlumberger would not be in line for award. As a result, Schlumberger is not an interested party to challenge the award on this basis. See JC Construction Co., B-229486, Dec. 29, 1987, 87-2 CPD ¶ 640.


In any event, we have reviewed the record and determined that Yarway's bid is responsive to the solicitation requirements. For example, the IFB requires that the detector probes have a guaranteed lifespan of 4 years. Schlumberger alleges that TVA improperly relaxed this requirement for Yarway because the installation, operation and maintenance manual submitted with Yarway's bid suggests that the probes be inspected annually and cleaned and tested on occasion, and states that any probe in service for 4 years should be renewed "as a matter of policy."

TVA argues that the maintenance program referred to by the protester consists of routine maintenance recommendations that bear on the performance and not the lifetime of the probes, and does not in any way qualify Yarway's bid. We agree. There is nothing in the language quoted from Yarway's manual or anywhere else in Yarway's bid to indicate that it has taken exception to or will not meet the 4-year lifespan requirement.

The protester also questions the certification of compliance with the Buy American Act in Yarway's bid and argues that TVA should make a detailed inquiry into Yarway's ability to comply with the Act. We disagree. Yarway's certification of compliance with this Act. In any event, whether Yarway ultimately complies with the Buy American Act is a matter of contract administration and is not for consideration under our bid protest function. See 4 C.F.R. § 21.3(f); Waukesha Alaska Corp. et al., B-229918 et al., Apr. 27, 1988, 88-1 CPD ¶ 412.

Finally, Schlumberger argues that TVA's specifications are unduly restrictive of competition because they were modeled after Yarway's descriptive literature. In addition, the protester alleges for the first time in its comments on TVA's report that the delivery clause--in the IFB--which states that bids offering earlier or later delivery than the date specified in the IFB will be considered "in relation to the probable cost to TVA"--is improper because the IFB does not explain how probable cost will be determined. As discussed above, both of these allegations are untimely because they concern alleged improprieties in the IFB that were apparent prior to bid opening but were not raised until after award was made to Yarway. See 4 C.F.R. § 21.2(a)(1).

The protest is denied in part and dismissed in part.

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