



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: King-Fisher Company

File: B-236687.2

Date: February 12, 1990

Emerson B. Fisher, for the protester.
Ted McDonald, for the interested party, Repco, Incorporated.
Vasio Gianulias, Esq., Office of the General Counsel,
Department of the Navy, for the agency.
Linda Lebowitz, Esq., Andrew T. Pogany, Esq., and Michael
Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest challenging agency's determination that awardee will be able to perform the contract by supplying equipment conforming to the specifications involves the issue of the awardee's responsibility, the affirmative determination of which General Accounting Office will not review absent a showing of possible fraud or bad faith on the part of the procurement officials or that definitive responsibility criteria in the solicitation were misapplied.

DECISION

King-Fisher Company protests the award of a contract to Repco, Incorporated under invitation for bids (IFB) No. N62922-89-B-6577, issued by the Department of the Navy for a radio fire alarm system for the Subic Bay Naval Base, Republic of the Philippines. King-Fisher essentially challenges the acceptability of Repco's bid.

We deny the protest.

The Navy issued the IFB on August 1, 1989, and eight bids were received at the time of bid opening on September 15. By letter dated September 20, King-Fisher, the third low bidder, filed an agency-level protest alleging that neither Seaboard Electronics Company, the apparent low bidder, nor Repco, the second low bidder, could manufacture equipment

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meeting the specification requirements. The agency rejected Seaboard's bid as nonresponsive. By letter dated September 27 to the agency, Repco, which did not take any exceptions in its bid to the specifications, confirmed that the equipment which it intended to supply would meet or exceed the specification requirements. On September 28, the agency awarded the contract to Repco. King-Fisher's protest to our Office followed on October 13.

King-Fisher challenges the agency's determination that Repco will be able to perform the contract by supplying equipment conforming to the specifications. King-Fisher alleges that although some Repco equipment has previously received approval from Underwriters Laboratories, Inc., the equipment which Repco would supply under this solicitation is not listed by Underwriters Laboratories or approved by Factory Mutual Research in accordance with the specifications. King-Fisher also alleges that the equipment Repco would supply does not conform to the specifications because it is not approved to operate within the required frequency range; is not approved to hold 500 transmitters; is not approved to meet the transmitter housing and operating panels requirements; and does not comply with the memory requirements.

Since Repco did not take any exception to the specifications in its bid its bid is responsive; the challenge to Repco's ability to perform in accordance with the specifications involves Repco's responsibility. TLC Sys., B-231969, Sept. 13, 1988, 88-2 CPD ¶ 238. Because a determination that a bidder is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, an agency's affirmative determination of responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation were misapplied. Bid Protest Regulations, 4 C.F.R. § 21.3 (m)(5)(1989); TLC Sys., supra.

There is no evidence in the record to indicate fraud or bad faith on the part of the procurement officials in determining that Repco is a responsible bidder which can supply the required equipment. Further, we point out that under section C-8 of the solicitation, Repco is not required to submit evidence of conformance of its equipment to the specifications until 30 days after notice of award or award of the contract. Thus, this requirement did not establish

a definitive responsibility criterion as a precondition to the award to Repco. See King-Fisher Co., B-205003, June 16, 1982, 82-1 CPD ¶ 592.

Since Repco's bid was responsive and since there is no basis to question the agency's determination of Repco's responsibility, we find the protest to be without merit.

The protest is denied.

for Ronald Berger
James F. Hinchman
General Counsel