



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Coastal Electronics, Inc.

File: B-250718

Date: February 16, 1993

Bonnie J. Refinski-Knight, Esq., Ward and Smith, for the protester.
Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
Mary G. Curcio, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's determination that the awardee will be able to perform the contract concerns the agency's affirmative determination that the awardee is responsible. The General Accounting Office will not review a procuring agency's affirmative determination that a bidder is responsible absent a showing of possible fraud or bad faith on the part of the contracting agency or that definitive responsibility criteria in the solicitation were misapplied.

2. Solicitation requirement that bidder submit prior to the commencement of performance evidence that its employees have obtained certain training concerns a performance requirement and is part of the general responsibility determination which the General Accounting Office will not review.

3. General Accounting Office (GAO) will review the contracting officer's determination that awardee met solicitation requirement that certificates of training be submitted because the requirement is a definitive responsibility criteria. GAO concludes that the contracting agency reasonably determined that the awardee met the definitive responsibility criteria where copies of the certificates submitted by awardee demonstrate that the certificates are sufficient to show compliance with IFB definitive criteria.

DECISION

Coastal Electronics, Inc. protests the award of a contract to SEABAS under invitation for bids (IFB) No. F31610-92-B0024, issued by the Department of the Air Force, Seymour

Johnson Air Force Base, for the maintenance of the base's land mobile radio network. Coastal asserts that the award is improper because SEABAS is not responsible and the firm failed to comply with the certification requirements listed in the IFB.

We deny the protest.

The IFB was issued on August 4, 1992, and it contained a provision stating that "contractors" shall submit "a Certificate showing successful completion of a military or commercial electronics school and a 'Certificate of Competency' issued by the Land Mobile Radio Industry for each technician in accordance with section C1, paragraph 1.2.3.1 of the [performance work statement] PWS." In addition, the referenced paragraph of the performance work statement provided that "prior to contract award" the "contractor" shall ensure that technicians have a certificate showing successful completion of a military or commercial electronics school and a "Certificate of Competency" issued by the Land Mobile Radio Industry. The paragraph went on to state that "prior to the commencement of work" the "contractor" shall furnish evidence that the technicians have attended specialized training conducted by or available from the original equipment manufacturer on specialized equipment.

On the September 3 bid opening date, SEABAS submitted the low bid of \$216,612 for the base year and 2 option years. Coastal submitted the next low bid of \$321,645. After determining that SEABAS was a responsible firm, the Air Force awarded the contract to the firm.

Coastal first asserts that the Air Force could not have reasonably determined that SEABAS was responsible in view of the fact that two of the firm's recent contracts for similar services have been terminated for default and considering SEABAS' allegedly poor performance under a prior contract at the base for these services and the firm's unrealistically low price under the current solicitation. Coastal submits that these factors demonstrate that SEABAS will be unable to perform the required maintenance services and thus is not a responsible firm.

A determination that a firm is capable of performing a contract is based, in large measure, on subjective judgments which generally are not susceptible to reasoned review. Thus, an agency's affirmative determination of a firm's 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 may have been misapplied. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1992); King Fisher Co., B-236697.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Here, the agency responds that it reviewed the prior defaults and did not consider them to be serious matters as they concerned small dollar value contracts and the agency further states that it considered SEABAS to have performed satisfactorily on the prior contract at the base. The Air Force further states that it believes that SEABAS has the expertise and capacity to perform at its bid price and that it believes SEABAS to be responsible. Coastal has not asserted that the contracting agency engaged in fraud or bad faith or failed to apply definitive responsibility criteria in reaching these conclusions. Accordingly, we have no basis to review this protest ground.

Coastal also argues that the Air Force should not have made award to SEABAS' because the firm did not meet the IFB certification requirements. As noted above, the solicitation established three separate certification requirements. We need not consider the requirement in paragraph 1.2.3.1 that the "contractor" provide "prior to the commencement of work," evidence that its technicians have attended specialized training courses on specialized equipment since this particular requirement to provide the information before work is to begin is clearly a performance obligation which the awardee need not comply with until after the award. See Southern Nevada Comms., B-241534, Feb. 22, 1991, 91-1 CPD ¶ 146. Whether SEABAS can meet that requirement is a matter of the firm's responsibility and, as discussed above, the contracting officer concluded that SEABAS is a responsible firm and we will not review that conclusion absent circumstances not present here.

On the other hand, we will review the contracting officer's conclusion that SEABAS met the IFB requirement to submit a certificate for each technician showing that the individual successfully completed a military or commercial electronics school and a "Certificate of Competency" issued by the Land Mobile Radio Industry for each. These requirements in our view establish definitive responsibility criteria. See Aerosystems, Inc., B-215892, Oct. 1, 1984, 84-2 CPD ¶ 374. Definitive responsibility criteria are specific and objective standards, established by an agency for a particular procurement, to measure a bidder's ability to perform the contract. A bidder must show compliance with definitive responsibility criteria as a precondition to award. See Ktech Corp.; Physical Research, Inc., B-241808; B-241808.2, Mar. 1, 1991, 91-1 CPD ¶ 237. In reviewing an allegation that definitive responsibility criteria have not been satisfied we will review the record to determine if the bidder has submitted sufficient evidence of compliance from which the contracting officer reasonably could conclude that

the criteria have been met. Apex Envtl., Inc., B-241750, Feb. 25, 1991, 91-1 CPD § 209.

Here, the Air Force reports that SEABAS submitted with its bid the required certificates for each of the two technicians the firm is to use and the agency has submitted copies of those certificates with its protest response. The certificates include, for the two technicians involved, diplomas from a military electronics school as well as a general radiotelephone operator licenses from the Federal Communication Commission (FCC).¹ According to the Air Force, the FCC license, also called a "General Radiotelephone Certificate," is adequate to meet the requirement for a "Certificate of Competency" from the Land Mobile Radio Industry.

Coastal argues that the certificates submitted by SEABAS are not sufficient. Specifically, Coastal points out that SEABAS submitted certificates for one technician who is currently employed by a company other than the awardee and thus, according to the protester, this technician cannot be considered in determining that SEABAS meets the certification requirement. Coastal also asserts that the FCC certificates are "irrelevant" when measuring the expertise level of an electrician and states that the certificates submitted by the technician, who is a current employee of the awardee, were not "presented by either a military or commercial electronics school" as required.

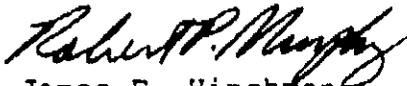
These arguments, in our view, do not demonstrate that the Air Force unreasonably determined that SEABAS met the IFB certification requirements. First, Coastal acknowledges that the first technician in question, though not at the time an employee of SEABAS, knew that his certifications were being submitted by the firm in connection with its bid for these services. Since there was no solicitation requirement that the proposed technicians be current employees of the bidder, we see nothing improper with the Air Force considering the credentials of this technician in determining that SEABAS met the certification requirements. Second, as far as the FCC licenses are concerned, section 2.2.7 of the performance work statement defines a "Certificate of Competency" as a two-way radio certification recognized by the Land Mobile Radio Industry "as a

¹One employee did not submit a copy of the actual FCC license. He did, however, submit proof that he has met all requirements to receive the license. We are informed by the agency that the individual in fact has such an FCC license. In our view, this was tantamount to the submission of the actual license and we will consider it as such for the purposes of this decision.

replacement or substitute for the Federal Communication Commission commercial license." Thus, we think that it was reasonable for the Air Force to consider SEABAS' submission of an FCC license, which according to the IFB was the equivalent of the Land Mobile Radio Industry "Certificates of Competency," as demonstrating substantial compliance with the IFB requirement. Third, our review of the certifications submitted on behalf of both technicians show that each has completed either a commercial or military electronics school. For example, regarding the one technician whose training certifications the protester specifically challenges, SEABAS has submitted evidence that the individual completed four different electronic training courses at the Army Signal Center at Fort Gordon. We think this reasonably fulfills the IFB requirement concerning the successful completion of a military or commercial electronics school.

We therefore conclude that the materials submitted by SEABAS contain sufficient evidence of compliance with the definitive responsibility criteria so that the agency could reasonably decide that the criteria have been met.

The protest is denied.


for James F. Hinchman
General Counsel