



Comptroller General
of the United States

314132

Washington, D.C. 20548

Decision

Matter of: Deutsch Metal Components

File: B-255316

Date: February 17, 1994

Alan Dickson, Esq., and Schlomo D. Katz, Esq., Epstein Becker & Green, for the protester.
Timothy Sullivan, Esq., and Martin R. Fischer, Esq., Dykema Gossett, for Aeroquip Corp., an interested party.
Vera Meza, Esq., and Joshua Kranzberg, Esq., U.S. Army Materiel Command, for the agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

Protest challenging agency's determination that awardee will be able to perform the contract by supplying an aircraft swaging tool kit conforming to the commercial item description in the solicitation involves an affirmative determination of the awardee's responsibility. General Accounting Office will not review this matter absent a showing of possible fraud or bad faith or misapplication of definitive responsibility criteria.

DECISION

Deutsch Metal Components protests the Department of the Army's determination to place an order with Aeroquip Corporation, rather than with Deutsch, under request for quotations (RFQ) No. DAAJ09-93-Q-1420, which was issued by the Army Aviation & Troop Command in St. Louis, Missouri for a supply of aircraft swaging tool kits. Deutsch contends that Aeroquip's product is noncompliant with the commercial item description in the RFQ, and that the Army relaxed its requirements in order to place the award with Aeroquip. We dismiss the protest.

The RFQ was issued on September 21, 1993, seeking quotations for a quantity of swaging tool kits that are used in the repair of damaged hydraulic, pneumatic, fuel and oil lines on Army aircraft. Swaging tools are used to bond together two separated or broken lines by "swaging" (crimping, pushing, and/or pulling) the lines onto a specially designed

fitting. The fittings are generally manufactured by a particular contractor and can only be swaged with that contractor's swaging tools.

The RFQ stated that it was replacing a request for proposals, No. DAAJ09-93-R-0206, in its entirety.¹ The RFQ included a Commercial Item Description (CID) for the swaging tool kits, which described the requirement as:

"a commercial, off-the-shelf tool kit capable of permanently swaging a comprehensive family of tube fittings to aluminum alloy, corrosion-resistant steel and titanium alloy tubing. The kit must be capable of installing fittings contained in either the Deutsch Permaswage or the Aeroquip Rynglok tube connecting system, which have both been qualified and approved for use on Army aircraft."

The RFQ incorporated a commercial item description (CID) by reference, which included a requirement that the swaging tool be capable of performing both "standard" and "reversed" swaging (that is, that the tool be capable of swaging fittings within one inch of a bulkhead, without requiring a separate tool for this function). The CID also specified that each swaging kit must provide all of the necessary tools for swaging fittings on tubing with outside diameters of 3/8, 1/2, 5/8, 3/4, and 1 inch in a single container weighing less than 60 lbs. The swaging tools were to use a hand-operated hydraulic pump as the power source.

Quotes were only solicited from Aeroquip and Deutsch, since they were the only approved sources for the item. No technical proposals were requested or submitted. Amendment 0001 to the RFQ decreased the required quantity slightly (and made other changes not relevant here) and requested another quote by September 27. Aeroquip and Deutsch each submitted a timely quote. Neither firm took any exception to the technical requirements.

Aeroquip's quote was low. On September 30, the Army awarded the contract to Aeroquip based on its low-priced quote. Deutsch was notified of the award the following day, and immediately requested a debriefing. At the debriefing, held 4 days later, Deutsch questioned whether Aeroquip could

¹Deutsch insists that the prior solicitation, under which both Aeroquip and Deutsch submitted proposals, is relevant here, arguing at length about events that occurred during the course of that procurement. We fail to see the relevance of any of the matters Deutsch has raised in connection with the prior solicitation, since that procurement was canceled and replaced by the RFQ.

provide tooling that complied with the CID, contending that the awardee's swaging system required the use of a reverse tool and that its fittings could not be swaged onto aluminum tubing. Later that day, the Army confirmed Aeroquip's intention and ability to perform. This protest followed on October 8.

Deutsch protested, on information and belief, that Aeroquip must have proposed meeting the requirement with a two-tool system, contending that the awardee does not make a tool kit that would comply with the specification. In the comments Deutsch submitted in response to the agency's report, the protester emphasizes that the basis of its protest is its allegation that the Army intentionally relaxed its requirement in order to award the contract to Aeroquip. We dismiss the protest.

We view Deutsch's protest, which basically questions Aeroquip's ability to comply with the specification requirements, as a challenge to the contracting officer's affirmative determination of Aeroquip's responsibility. Although Deutsch objects to this characterization of its protest, insisting instead that it is challenging the agency's intentions rather than questioning the ability of the awardee to provide the specified product, we are not persuaded by the protester's arguments. While Deutsch insists that its protest revolves around "whether the solicitation's evaluation criteria were followed," the RFQ did not include any evaluation criteria; competition in this case was based on price alone. Offerors were not required to submit technical proposals or descriptive literature, or to describe the exact item they would supply if awarded the contract.² Here, Aeroquip's quote did not take any exception to the RFQ's terms and in fact Aeroquip confirmed its intent to comply with CID. Whether a vendor has the apparent ability to perform under a contract is a question of the firm's responsibility. See Automatic Screw Mach. Prods. Co., B-238583; B-238584, June 1, 1990, 90-1 CPD ¶ 519; The Forestry Association, Inc., B-236225.2, Nov. 17, 1989, 89-2 CPD ¶ 476. Under our Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5), we will not review a challenge to a contracting officer's affirmative responsibility determination absent a showing of possible


²Aeroquip was asked to furnish a part number, but nothing more. There is no indication in the record that this part number identifies a non-conforming item, or otherwise qualifies the quotation. The protester does not argue that this is the case. It appears that the agency request for the part number was for information purposes.

fraud or bad faith or a failure to properly apply definitive responsibility criteria. Rockwell Int'l Corp., B-241896, Feb. 15, 1991, 91-1 CPD ¶ 130.

Regarding Deutsch's insistence that the "real issue" is the Army's knowledge at the time of the procurement, we assume that the protester means to question whether the Army's affirmative determination of Aeroquip as a responsible contractor was made in good faith. In order to show that a responsibility determination was made in bad faith, the protester must show a specific or malicious intent on the part of agency officials; it may not rely on its own disagreement with the contracting officer's determination. See Teledyne CME, B-223609, Sept. 23, 1986, 86-2 CPD ¶ 338. Where, as here, the record includes every indication that the responsibility determination was reasonably made,¹ and the allegation of bad faith is supported only by the protester's opinion of the awardee's product line, we will not consider the matter further.

Deutsch also protests the price-based evaluation, contending that it is unrealistic to consider only the price of the tool kits when comparing the two firms' quotations since the tools only work with each firm's own fittings. Deutsch alleges that the awardee's fittings are more expensive, and that this element should have been considered when the prices for the tool kits were compared. We consider this aspect of the protest untimely raised since it was apparent from the solicitation that the only prices that were being solicited were for the tool kits. See 4 C.F.R. § 21.2 (a) (1).

The protest is dismissed.


Michael R. Golden
Assistant General Counsel

¹The record shows that the awardee demonstrated its product's compliance with the aspects of the specification that the protester had challenged, to the Army's satisfaction. In addition, the agency has provided us with a videotape demonstrating the use of Aeroquip's swaging tool in operation in close quarters as required by the CID. In addition, the agency has furnished affidavits from two of its employees who have seen samples of the single tool product Aeroquip plans to furnish the agency.