



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Envirodyne Systems Inc.

File: B-258045

Date: December 8, 1994

John C. Sullivan, Esq., Nauman, Smith, Shissler & Hall, for the protester.

James L. Weiner, Esq., and Justin P. Patterson, Esq., Department of the Interior, for the agency.

Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid was properly rejected as nonresponsive where the invitation for bids (IFB) required an enclosed hood on the sludge dewatering unit and the bidder offered to supply a hood with an open top.

DECISION

Envirodyne Systems Inc. protests the rejection of its bid under invitation for bids (IFB) No. 1443IB970094031, issued by the National Park Service to procure sludge dewatering equipment for the Bartlett Cove Sewage Treatment Plant at Glacier Bay National Park and Preserve, Alaska. The bid was rejected because the agency determined that the equipment being offered by Envirodyne did not meet all the material requirements of the specifications. Envirodyne contends that it should have received the award.

We deny the protest.

The IFB, issued May 25, 1994, requested prices for six items: a sludge pumping and conditioning system; sludge dewatering unit; bag handling cart; wire tie tool with wire ties; 200 dewatering bags; and 50 pounds of polymer, SW909 (Sweet Water Technologies) or equal. Bidders were to submit information with their bids only if bidding a polymer that was an equal to the listed brand name polymer. The equipment was required to be capable of removing water from sludge and converting the sludge into solid material which could be bagged for removal.

Two bids were received by the June 23 bid opening. Envirodyne submitted a total bid price of \$18,985. Resi-Tech, Inc. submitted a total bid price of \$21,800. Envirodyne's bid was rejected as nonresponsive on the basis of descriptive literature that it submitted with its bid and was expressly identified by Envirodyne as part of its bid. The agency concluded that Envirodyne's system was incapable of dewatering the undigested sludge generated by the agency's treatment plant and that the bagging unit of the Envirodyne system did not have an enclosed hood required to speed filtering (by providing pressurization) through the bags and to detect levels of overflow which would shut down the system. Award was made to Resi-Tech on July 14.

Envirodyne contends that its equipment was improperly evaluated as unacceptable. Specifically, it contends that its descriptive literature shows that its equipment satisfies the agency's dewatering requirements and that there was no requirement in the IFB that the sludge dewatering unit have an enclosed hood. Further, Envirodyne believes that the Resi-Tech bid should not have been accepted for award because Resi-Tech does not intend to comply with the IFB Buy American Act provisions for furnishing domestic end products since it provided no information with its bid regarding two items that Envirodyne alleges will be manufactured in Italy.¹

We believe that Envirodyne's bid was properly rejected as nonresponsive. While bidders were not required to submit descriptive literature for the equipment they were offering, Envirodyne did submit such literature and identified it as being applicable to its bid. Thus, even though unsolicited, this literature was properly used to evaluate whether the equipment that Envirodyne was offering met the specifications set out in the IFB. Balantine's South Bay Caterers, Inc., B-250223, Jan. 13, 1993, 93-1 CPD ¶ 39.


One of the reasons for the rejection of Envirodyne's bid was that its sludge dewatering unit did not have an "enclosed hood." Envirodyne's unit consisted of a hood that was enclosed on four sides and that had an open top to permit observation of the dewatering operation and to allow easy access for cleanup. Although Envirodyne argues to the

¹The protester also argues that Resi-Tech's bid should be rejected because it failed to provide, as required, a price for one of the six items--the item requesting 50 pounds of the polymer, SW909 or equal, and because it provided the same (\$3) unit and total prices for the 200 dewatering bags. These protest issues are untimely since they were first raised in the protester's comments to the agency report. 4 C.F.R. § 21.2(a)(2) (1994).

contrary, the IFB did clearly require the unit to include "an enclosed hood." A hood that is open at the top would not seem to meet a requirement for an enclosed hood, and the protester makes no argument to that effect. Accordingly, we conclude that in offering a hood that is open at the top Envirodyne took exception to the enclosed hood requirement and that its bid was therefore properly rejected as nonresponsive. Any protest now against this enclosed hood requirement is untimely since such a protest must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1).

Envirodyne contends that Resi-Tech's bid should not be accepted since it believes the awardee intends to furnish some products that are not domestic. Where, as here, the Buy American Act, 41 U.S.C. § 10a-10d (1988), applies to a procurement, the bidder must certify whether it will furnish domestic or foreign products. Here, Resi-Tech certified that it would furnish domestic end products. Resi-Tech is obligated to comply with that certification. A protester's allegation that a bidder cannot or will not supply domestic products concerns a matter of responsibility which generally we will not review absent a showing of possible fraud or bad faith, or that definitive responsibility criteria were not followed. Bryant Org., Inc., B-228204.2, Jan. 7, 1988, 88-1 CPD ¶ 10. Further, a protester's allegation that a contractor is not meeting its obligation is a matter of contract administration and, as such, is not for resolution under our Bid Protest Regulations. 4 C.F.R. § 21.3(m)(1); see Autospin, Inc., B-233778, Feb. 23, 1989, 89-1 CPD ¶ 197.

The protest is denied.


 for Robert P. Murphy
 Acting General Counsel