



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Veterans Contracting Group, Inc.

**File:** B-405940

**Date:** January 12, 2012

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Ronald V. Montano, for the protester.  
Mark Machiedo, Esq., Department of Veterans Affairs, for the agency.  
Noah B. Bleicher, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

Protest that agency unreasonably rejected protester's bid for not meeting solicitation requirements is sustained, where invitation for bids did not restrict bids to specific types of chillers or refrigerants and record does not support that agency reasonably considered protester's bid.

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### DECISION

Veterans Contracting Group, Inc. (VCG), of Mamaroneck, New York, protests the rejection of its bid and the award of a contract to Regiment Construction Corp., of Elizabeth, New Jersey, under invitation for bids (IFB) No. VA-243-11-IB-0284, issued by the Department of Veterans Affairs (VA), to replace a chiller at the VA's New York Harbor Medical Center. VCG contends that the agency improperly rejected its bid.

We sustain the protest.

### BACKGROUND

The VA published the IFB on August 16, 2011, as a total set-aside for service-disabled veteran-owned small businesses. Contracting Officer's Statement at 1; Agency Report (AR), Tab 17, IFB, at 6. The IFB contemplated the award of a contract to replace an existing chiller with a "new 1,200 ton water cooled refrigerant chiller" and related mechanical, electrical, and architectural work, with one year of service and maintenance for the chiller. *Id.* at 7. The IFB included 384 pages of specifications and drawings detailing various aspects of the chiller replacement project. *See* AR, exh. 6, Specifications; AR, exh. 7, Drawings, at 1-14. With regard to the chiller specifically, the IFB's specifications stated:

Subject to compliance with requirements, manufacturers offering products that may be incorporated into the [w]ork include the following:

1. York MaxE (YK)
2. Carrier, a United Technologies Company
3. McQuay International

AR, Tab 6, Specifications, at 23 64 00-4.<sup>1</sup> The specifications also mentioned two different refrigerants--HFC-134a and HCFC-123--that could be used in the chiller. In this respect, the specifications stated, "Chillers shall be open or hermetically sealed, using refrigerant: HFC-134a," *id.* at 23 64 00-5, and "Chillers using refrigerants HFC-134a shall be supplied with single or multiple reseating type, spring-loaded relief valve." *Id.* at 23 64 00-8. The specifications also stated, "Purge suction temperature, if refrigerant HCFC-123 is used," and "Purge elapsed time, if refrigerant HCFC-123 is used." *Id.*

Also relevant here, the IFB incorporated by reference Federal Acquisition Regulation (FAR) § 52.214-18, Preparation of Bids--Construction, which provides in subsection (d) that "[a]lternate bids will not be considered unless this solicitation authorizes their submission." FAR § 52.214-18; *see* AR, Tab 17, IFB, at 12. The solicitation was otherwise silent with regard to alternate bids. *See* AR, Tab 17, IFB, at 1-55.

The agency received four bids by the September 15 bid opening. Supp. AR, exh. 22, Abstract of Bids, at 1-2. VCG's bid included a Trane chiller, model CVHF1300, that uses R-123 refrigerant.<sup>2</sup> Protest, encl. 1, Bid Package, at 1. VCG's bid package also included 14 pages of specifications and drawings describing the Trane chiller in detail to show that it complied with the IFB's requirements. *Id.* at 1-14. In addition, VCG submitted a letter that stated, "If the York unit listed on the Mechanical Schedule is required, please add \$95,000.00 to our bid amount. Our alternate bid proposal amount with the York unit would be: \$1,514,000.00." Protest, encl. 2, VCG Bid Letter, at 1. VCG's bid of \$1,419,000 was the apparent low bid. Supp. AR, exh. 22, Abstract of Bids, at 1-2. Regime's bid, which included the York chiller and R-134A refrigerant, was \$1,570,000.<sup>3</sup> *Id.* at 2; Contracting Officer's Statement at 2.

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<sup>1</sup> A drawing for the chiller included data for York model YKKXKSK1-DAG "or approved equal." AR, Tab 7, Drawing No. M-400.

<sup>2</sup> "R-123" is a trade name for refrigerant HCFC-123. *See* Comments, encl. 1, Letter From Trane Company, at 2.

<sup>3</sup> The record includes post-bid opening correspondence between the agency and the bidders in which the agency sought clarification from the bidders regarding the chiller brand and refrigerant type contained in each bid.

The VA determined that VCG's bid was nonresponsive because it "failed to meet the material requirements of the specifications and drawings." Supp. AR, exh. 27, Memorandum from Construction Supervisor Regarding VCG's bid, at 3. The VA deemed Regiment's bid to be the lowest-priced bid that met the IFB's requirements.<sup>4</sup> Contracting Officer's Statement at 2.

On September 27, VCG filed a protest with the VA, objecting to the agency's decision to award the contract "to anyone other than the low bidder." Protest, encl. 4, Agency-Level Protest, at 1. The VA denied VCG's agency-level protest on September 29. Supp. AR, exh. 32, VA Response to VCG's Protest, at 1-4. With regard to VCG's alternate bid for a York chiller, the VA noted that the IFB did not authorize alternate bids and accepting the alternate bid would provide an unfair advantage to VCG. *Id.* at 3. With regard to VCG's bid for a Trane chiller, the agency stated that the cut sheets VCG submitted were "questionable" and "did not meet the material requirements of the specifications and drawings." *Id.* at 2, 3. VCG appealed the VA's decision to GAO.

## DISCUSSION

VCG protests the VA's rejection of its bid and alternate bid. Specifically, VCG argues that its bid for the Trane chiller met the requirements and specifications of the IFB. Comments at 1-2. In the alternative, VCG argues that the VA should have accepted its alternate bid for the York chiller as the low bid for the project. Protest at 2.

The agency argues that the IFB called for a specific "brand name refrigerant" to be used, and VCG's bid "failed to meet the criteria" in the IFB. Supp. AR at 1. Additionally, the agency asserts that the protester's bid and alternate bid "created two quoted prices" which resulted in the protester's bid being "contradictory" and nonresponsive. *Id.* at 1, 5.

To be responsive, a bid must show on its face at the time of bid opening that it is an unqualified offer to comply with all material requirements of the solicitation, and that the bidder intends to be bound by the government's terms as set forth in the solicitation. *Sundt Corp.*, B-274203, Nov. 5, 1996, 96-2 CPD ¶ 171 at 2. A bidder's intention must be determined at the time of bid opening from all the bid documents, which include any extraneous documents submitted with the bid, since such materials are part of the bid for purposes of determining responsiveness. *M&G Servs., Inc.*, B-244531, June 27, 1991, 91-1 CPD ¶ 612 at 1-2.

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<sup>4</sup> Another bidder submitted the second lowest bid at \$1,497,777, but the VA rejected that bid. Supp. AR, exh. 22, Abstract of Bids, at 1; Contracting Officer's Statement at 2.

As an initial matter, we first address whether the agency should have considered VCG's alternate bid for the York chiller. We conclude that it was reasonable for the VA to reject the alternate bid. In this regard, the IFB included a FAR clause stating that the agency would not consider alternate bids unless the IFB authorized their submission. AR, Tab 17, IFB at 12; see FAR § 52.214-18. The letter that VCG submitted with its bid package clearly indicated the firm was submitting an "alternate bid proposal" of the York model chiller at a higher price. Protest, encl. 2, VCG Bid Letter, at 1. Since the IFB here did not authorize the submission of alternate bids, the VA's decision to reject VCG's alternate bid for the York chiller is unobjectionable.<sup>5</sup>

Next, we turn to VCG's contention that the VA improperly rejected its bid for the Trane chiller and the R-123 refrigerant as not meeting the specifications in the IFB. The record is remarkably absent of any rationale to support the agency's arguments in this regard. The contemporaneous record contends vaguely that cut sheets for the Trane chiller were "questionable" and that the R-123 refrigerant associated with the Trane chiller did not meet the specifications of the IFB, without any explanation of what was questionable or what specifications were not met. During the development of the protest, we sought explanation from the agency, and the agency merely repeated that the bid was "lacking and thus, nonresponsive" and "failed to meet the criteria established by the agency in its IFB." Contracting Officer's Statement at 2; Supp. AR at 1. Despite multiple opportunities, the agency has not explained why VCG's proposal failed to meet the IFB's requirements, which of the 384 pages of specifications and drawings were not met, or what in the 14 pages of documentation describing the chiller model VCG included in its bid was questionable. Without support for its conclusions, we cannot find that the agency acted reasonably in rejecting VCG's bid.

Moreover, to the extent the agency argues that the IFB's specifications required a particular brand name chiller or refrigerant, the record does not support that assertion.<sup>6</sup> The specifications identified three manufacturers that offered products that "may be" used in the project, but the IFB did not restrict bidders to these brands exclusively. See AR, Tab 6, Specifications, at 23 64 00-4. Similarly, the IFB refers both to the use of HFC-134a refrigerant and R-123 refrigerant, and it did not restrict

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<sup>5</sup> The VA asserts that the presentation of alternate bids was "contradictory," Supp. AR at 1, 5, but our review of the record does not reveal contradictions or ambiguities in VCG's bids. We also find no support for the agency's apparent belief that VCG's submission of an alternate bid rendered the main bid non-responsive. See Supp. AR at 5-6.

<sup>6</sup> We note that the IFB contained the VA Acquisition Regulation (VAAR) brand name or equal clause. See AR, Tab 17, IFB at 27; VAAR § 852.211-73. However, as discussed above, no brand name was required for the chiller or refrigerant.

bidders to a particular type. We therefore find the agency's rejection of VCG's bid on the basis that the bid was not for a specified chiller and refrigerant to be inconsistent with the solicitation.<sup>7</sup>

We recommend, consistent with this decision, that the VA reconsider VCG's bid for the Trane chiller to determine if it satisfies the specifications of the IFB. We further recommend that the agency reimburse the protester the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2012). The protester's certified claim for costs, detailing the time spent and the cost incurred, must be filed to the agency within 60 days after receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson  
General Counsel

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<sup>7</sup> We take no position on whether the Trane chiller bid by VCG complies with the remaining specifications of the IFB.