

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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95283

FILE: B-181281

DATE: July 3, 1974

MATTER OF: Science Management Corporation (Decision
Studies Group)

- DIGEST:
1. Bid was improperly rejected for failure to include "track record" of bidder as required by invitation since experience qualification provisions relate to responsibility and bid should not be rejected for literal noncompliance in absence of specific nonresponsibility determination based upon consideration of bidder's qualifications.
 2. Rejection of bid for failure to include documentation not clearly called for is of doubtful validity as failure of invitation to clearly state requirement had effect of ensnaring bidder into submitting nonresponsive bid. Furthermore, failure of IFB to clearly express requirement normally requires cancellation of solicitation and readvertisement under terms which clearly reflect Government's needs.
 3. Invitation which fails to set forth objectively determinable standards against which bids may be evaluated on an equal basis for design and development effort is not sufficiently descriptive to permit full and free competition as required by 41 U.S.C. 253(a), and award pursuant to such IFB should normally be cancelled. However, cancellation not directed here as exigency of procurement will not permit delay involved in such action.

The protester, the low bidder under solicitation No. 10-74, protests the rejection of its bid thereunder, and the subsequent award of a contract by the Veterans Administration (VA) to another concern.

The subject solicitation was issued as an invitation for bids (IFB) for consultant services to assist the VA in the design and development of a complex telecommunications system

to support the VA's Benefits "Target System." The scope of the project was divided into four phases according to specifications which might appropriately be classified as "performance specifications" in that they set forth various tasks for the contractor to undertake but left the methodology to the discretion of the contractor. Page 5 of the solicitation set forth the following requirements for submission of information along with the IFB:

- (1) A total cost for Phases I, II and III, with a cost break-out for each phase.
- (2) An estimated cost for Phase IV for informational purposes only /an award was to be made for Phases I, II & III only/.
- (3) A "track record" of the respondent firm in developing and designing similar telecommunications networks, including a description and scope of the networks designed, the Government agency or business enterprise for which the work was performed, and any other information attesting to the contractor's qualifications.

Page 5 identified no other submissions to be included with the responses to the IFB.

However, the specifications for Phase I, Task 4, included the following:

"In this task, the contractor shall develop the detailed methodological framework and data taxonomy (supplied in outline form in his proposal) for analyzing the VA environment."

Six bids were received on May 9, 1974, with the protester's bid of \$42,240 for Phases I, II and III low, followed by that of Systems Architects, Inc. (SAI) at \$42,554.10.

By memorandum of May 16, 1974, the Director of the Telecommunications Service advised that the evaluation of the six bids had been completed, and it was determined that the protester's low bid should be rejected as nonresponsive for failure to include with the bid an outline of the methodological framework and data taxonomy for accomplishing Task 4, and for failure to provide the "track record" as required by the provision set forth on page 5. The Director stated that the methodological framework, data taxonomy, and track record were of utmost importance in evaluating the bids in view of the

complexity, sophistication and criticality of the envisioned system. Accordingly, it was determined that the award should be made to SAI which, while second low, had complied with requirement for the outline and had a proven and in-depth track record in the design and development of such systems.

The award was made to SAI at 11:00 a.m. on May 17, and the protester first learned of the award and the reasons for the rejection of its bid during the late afternoon of May 17.

The protester objects to the failure of the contracting officer to provide notice of the rejection of its bid prior to the execution of the contract with SAI, presumably because it wasn't permitted the opportunity to file a protest with our Office prior to award.

It is further contended that the requirement for submission of a "track record" was fulfilled by the inclusion in the protester's bid of the resumes of its key personnel, setting forth their accomplishments on various telecommunication networks and systems. It is submitted that inasmuch as the tasks set forth in the IFB are to be performed by such personnel, the determination whether the protester can perform the prospective contract should be based on the experience of the pertinent personnel rather than the firm's "track record".

However, the crux of the protest relates to the rejection of the bid for failure to include an outline of the methodological framework and data taxonomy. The protester submits that this was obviously a parenthetical request intended originally to be included as part of a technical proposal, and that the IFB requirements on page 5 clearly and without question do not require bidders to submit with their bids technical proposals or an outline of methodological framework and data taxonomy. Therefore, the protester's argument is that it was entitled to rely on the provision on page 5 as far as required submissions are concerned and that it fully complied therewith.

With regard to notice of the rejection of the protester's bid, such notification, including the reasons for rejection, was conveyed by letter dated May 17, 1974, the same day as the consummation of the award with SAI. Although section 1-2.408 (a)(1) of the Federal Procurement Regulations provides for prompt notice of bid rejection, there is no requirement that such notice be provided prior to award. See B-179767, May 16, 1974, concerning the analogous Armed Services Procurement Regulation.

Science Management Corporation's failure to submit its "track record" was not a proper basis for rejection of its bid. Our Office consistently has held that experience qualification provisions such as that in the subject solicitation relate to the matter of bidder responsibility and a bid may not be rejected merely for failure to meet the literal requirements of such provisions, but that there must be a specific determination of nonresponsibility based upon consideration of the qualifications of the particular bidder. 48 Comp. Gen. 291, 297 (1968); 45 id. 4 (1965). In the absence of such a determination in the instant case, the protester's bid should not have been rejected.

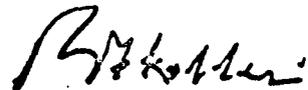
The protester has also objected to rejection of its bid for failure to include the outline referred to under Task 4, contending that its omission was justified because it was not listed on page 5 of the IFB along with the various items which were to be submitted with the bids. We think there is merit to this contention and have stated under similar circumstances that, although bidders are expected to scrutinize carefully an entire solicitation package and to request assistance if interpretation problems arise, the Government has the initial responsibility of stating what is required in reasonably lucid terms. Generally, where a solicitation so inadequately expresses the Government's requirements as to ensnare the average bidder into submitting a nonresponsive bid, the solicitation should be cancelled and the procurement resolicited under terms which clearly reflect the Government's needs. 52 Comp. Gen. 842, 846 (1973). As constituted, the IFB in the instant case cannot be considered to clearly express the VA's need for submission of the outline of the methodological framework and data taxonomy with the bid in the absence of a reference thereto on page 5, and only a parenthetical reference thereto under Task 4 of the specifications.

We find the solicitation also defective for other reasons. 41 U.S.C. 253(a) requires an invitation for bids to set forth specifications which are sufficiently descriptive in language to permit full and free competition. Such obligation requires that the invitation be sufficiently definite to permit evaluation of bids on a common basis. B-173452, September 27, 1971. Inasmuch as the instant solicitation included performance rather than design specifications, which had the effect of leaving to each bidder the methodology by which the task was performed, subject only to a subjective approval of the methodology by the VA, it was devoid of any objectively determinable standards against which such submissions could be

evaluated on an equal basis to determine the acceptability of the low bid. See B-178625, July 19, 1973, 52 Comp. Gen. _____. Furthermore, it is obvious that the technical nature (design and development) of this procurement was such that formal advertising with detailed and precise specifications as required by 41 U.S.C. 253(a) was neither feasible nor practicable. See B-170461, May 11, 1971. For the foregoing reasons, the subject IFB was defective and the contract awarded pursuant thereto should normally be terminated and the procurement resolicited in a manner that would eliminate these material defects. See B-178625, supra.

However, the deliver schedule in the IFB requires the completion of Phase I by June 15, 1974; Phase II by September 1, 1974; and Phase III by September 20, 1974. The VA advises that these are considered maximum time limits which cannot be extended without incurring an unacceptable delay affecting the delivery of veterans benefits, health care, and other services. In view thereof, and in view of the time that would be involved in terminating and resoliciting the procurement, we are of the opinion that it would not be in the interest of the Government to disturb the award at this time. See 48 Comp. Gen. 420, 429 (1965).

In light of the irregularities noted in this decision, by separate letter we are requesting that the VA take appropriate action to preclude a recurrence of such irregularities in future procurements.



Deputy Comptroller General
of the United States