

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

60114

FILE: B-184085

DATE: November 3, 1975

MATTER OF: Associated Electronics, Inc.

97580

DIGEST:

1. Specification in IFB requiring contractor furnish evidence of attendance at certified Sony repair course constitutes definitive responsibility criterion; therefore, whether requisite evidence has been furnished is matter cognizable by GAO despite general declination by GAO to review affirmative responsibility determinations.
2. Statement furnished to survey officer conducting preaward survey that contractor's consultant attended required Sony repair course constitutes evidence which satisfies responsibility criterion. However, GAO will not review sufficiency thereof, and in the absence of allegation of fraud matter of affirmative determination of responsibility will not be further considered.
3. Notwithstanding that contractor may not have possessed required technical personnel on date of bid opening, where contractor proposed to employ such person and in fact executed agreement for such employment prior to award, contractor was properly awarded contract because such a matter relates to bidder responsibility and the crucial time is time for performance plus necessary lead time.
4. Protest that contractor is failing to perform in conformance with specifications will not be entertained by GAO since such contentions are properly for resolution by contracting agency in course of contract administration.

The Procurement Division at Fort Bliss, Texas, received a request for electronic maintenance service on certain tape decks, video reproducers, and other Sony equipment owned by the Army and located at Fort Bliss. Accordingly, invitation for bids (IFB) DABT51-75-B-0137 was issued, noting that bid opening would occur

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on April 9, 1975. Two bids were submitted. Associated Electronics, Inc. (Associated), protester herein, was the last successful contractor and quoted a bid price of \$28,600. Border Electronic Services, Inc. (Border), was low bidder at \$20,696.96.

Because the Procurement Division had not previously dealt with Border, it requested a preaward survey of that firm by DCASR which was accomplished and which found Border responsible and recommended complete award. The survey was completed on May 1, 1975. On May 8, Associated protested to the Procurement Division alleging that "at the time of the bid on April 9, 1975, Border Electronic was not capable of fulfilling the terms of the bid" because it did not possess a technician who had attended a certified Sony repair maintenance course. This protest flatly contradicted the DCASR finding that Border possessed the requisite technical capacity in having "on board" a consultant, one Tom Elliott, who "has had formal training in Sony maintenance at Alpha Labs, Inc."

In support of its protest, Associated produced a statement from Mr. Elliott to the effect that he had never been an employee of Border and that he would not assist Border during normal working hours. Border then produced on May 12, 1975, a contract of employment between Border and Elliott which acknowledged Elliott's prior agreement to perform for Border effective April 9, 1975. In a statement of May 12, Elliott recited that on May 2, Associated offered him an inducement to "terminate my oral contract with Border." This recital was in essence corroborated by a letter from the president of Associated, Mr. Richard Wood, wherein he treated the Elliott-Associated agreement as not "in force" and demanded repayment of a \$500 advance.

On May 20, 1975, contract award was made to Border. Associated thereupon protested to our Office alleging that the "contractor is not a qualified bidder," and enclosing its prior correspondence with the contracting agency.

In basing its protest upon Border's lack of qualifications and its alleged incapacity to perform the contract, protester is in essence questioning the responsibility of the contract awardee. This Office does not review protests against affirmative determinations of responsibility unless either fraud is alleged on the part of procuring officials or where the solicitation contains definitive

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responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376.

In the instant case, clause F-8 of the specifications stated that "the contractor must show evidence of having attended a certified Sony repair maintenance course on equipment associated with this contract." Thus, the question of responsibility revolves around the bidder's meeting a specific and objective criterion expressed in the solicitation. Whether the requisite evidence has been produced is a matter cognizable by this Office. Yardney Electric, supra. As noted above, the preaward survey concluded that "the contractor has a consultant on-board, Mr. Tom Elliott, who has had formal training in Sony maintenance at Alpha Labs, Inc." While this statement alone does not meet the requirement, our inquiry reveals that the surveying officer made that determination upon being furnished a statement from Alpha Labs to the effect that in May 1973, Alpha Labs was designated as a Regional Service Center by Sony, that Sony at that time conducted a week-long training course, and that Mr. Tom Elliott was in attendance therein. Accordingly, we believe that the representation made by Alpha Labs constitutes the requisite evidence and satisfies the requirement of the specifications. However, we will not review the sufficiency thereof and cannot in the absence of allegations of fraud, which were not made here, further consider the matter of this affirmative determination of responsibility Yardney Electric, supra.

Protester further contends that Border should not have been awarded the contract because it did not possess the required technician on the date of bid opening, April 9, 1975. As discussed above, this allegation relates to bidder responsibility. Because the purpose of the requirement was to determine the bidder's ability to technically conform to the specifications of the contract, the crucial time is the time scheduled for performance, plus any lead time which may be necessary in a particular call. 39 Comp. Gen. 655, 658 (1960); 46 Comp. Gen. 326, 329 (1966). Thus, where qualified technical personnel are self-employed at the time of proposal submission, a contractor


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satisfies the requisite level of technical competence by proposing to employ such personnel upon award. Teledyne Ryan Aeronautical, B-180448, April 29, 1974, 74-1 CPD 219. In fact, the contractor is free to replace those persons with other qualified personnel. B-180448, supra.

As recited above, the facts here indicate that the qualified technician, Mr. Tom Elliott, apparently was under an oral contract to perform services for Border on April 9, the date of bid opening. While this contract may not have been legally binding, a subsequent agreement of May 12, 1975, in writing requires Elliott to perform services in connection with the contract awarded to Border by the Army on May 20, 1975. By procuring Mr. Elliott's services prior to award and performance, Border has met the requirement of its contract with the Army.

Subsequent to the lodging of its protest, Associated has filed in our Office a letter contending that certain enumerated observations by it of the performance by Border of its contract duties indicate noncompliance by Border with certain specification requirements of the contract. Associated therefore requests that Border's contract be defaulted and that award be made to Associated. These contentions do not necessarily relate to the legality of the award process, which it is our function to consider in resolving bid protests, but rather are properly for resolution by the contracting agency during the course of contract administration. Edward E. Davis Contracting, Incorporated, B-179719, B-179720, January 29, 1974, 74-1 CPD 37.

For the reasons discussed above, the protest is denied.


Deputy Comptroller General
of the United States