



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rockwell International Corporation

File: B-241807

Date: February 15, 1991

Lee G. Cornett for the protester.
Charles J. Roedersheimer, Esq., and Renee Karn, Esq., Defense Logistics Agency, for the agency.
Linda S. Lebowitz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's determination that awardee will be able to perform the contract by supplying items conforming to the specification requirements involves an affirmative determination of the awardee's responsibility which the General Accounting Office will not review absent a showing of possible fraud or bad faith or misapplication of definitive responsibility criteria.

DECISION

Rockwell International Corporation protests the award of a contract to D-F Corporation under request for proposals (RFP) No. DLA900-90-R-0081, issued by the Defense Logistics Agency for incremental quantities of band pass filters for radios on Poseidon Class submarines. Rockwell argues that D-F cannot furnish the filter in accordance with the specification requirements.

We dismiss the protest.

The agency issued the RFP on August 8, 1990. The RFP required the item to be manufactured and tested to Stewart Warner drawing No. 08P228093. The RFP also required acceptance testing in accordance with the specifications of that drawing, including verification of physical dimensions. The RFP also included an inspection and acceptance clause.

D-F and Rockwell submitted proposals by the amended closing date of August 24. Neither D-F nor Rockwell took any exceptions in its respective proposal to the Stewart Warner specification requirements. For an increment of 260-350

filters, D-F offered a price of \$143 per unit and Rockwell offered a price of \$157 per unit. On September 10, the agency awarded a contract to D-F, the low priced offeror, for a quantity of 350 filters at a total contract price of \$50,500. On September 14, Rockwell filed an agency-level protest alleging that D-F's filter does not meet the RFP's specification requirements. The agency denied Rockwell's agency-level protest on October 11. Rockwell filed its protest with our Office on October 24.

Rockwell challenges the agency's determination that D-F will be able to perform the contract by supplying a filter conforming to the specification requirements. Rockwell states that in 1988, after performing its own in-house test, two of D-F's filters failed to meet the required temperature specification in paragraph 3.9.1 of the Stewart Warner specifications. Rockwell apparently believes, based on the results of its 1988 in-house test, that the agency has relaxed the specification requirements for D-F, thereby allowing D-F to offer a nonconforming filter at a lower price while Rockwell is required to offer a conforming filter at a higher price.

Here, the record shows that the agency considered Rockwell's in-house test results, noting that one of the D-F filters tested by Rockwell was not the same filter as the one the agency is purchasing from D-F under this contract. After receiving Rockwell's test results, the agency conducted its own tests which were not conclusive because the agency either tested D-F filters other than the one being purchased from D-F under this contract or the agency tested the D-F filters to different Stewart Warner specifications.^{1/} In any event, there is nothing in the record to suggest that the agency relaxed the specification requirements for D-F. All offerors competed on an equal basis and were required to submit offers for a filter satisfying the Stewart Warner specification requirements as described in the RFP. The RFP clearly requires acceptance testing of the awardee's filter to ensure that the filter does in fact conform to all of the Stewart Warner specification requirements, including the temperature requirement in paragraph 3.9.1. This testing must be successfully completed prior to the agency's acceptance of the filter.

^{1/} The agency and Stewart Warner, the original equipment manufacturer, report that previously purchased D-F filters have conformed to the Stewart Warner specification requirements. The record also shows that Stewart Warner purchases these filters from D-F and considers D-F qualified to furnish these filters.

Therefore, we view Rockwell's protest, which basically questions D-F's ability to comply with the specification requirements, as a challenge to the contracting officer's affirmative determination of D-F's responsibility. Under our Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1990), we will not review a challenge to a contracting officer's affirmative responsibility determination absent a showing of possible fraud or bad faith or a failure to properly apply definitive responsibility criteria. Automatic Screw Machine Prods. Co., B-238583; B-238584, June 1, 1990, 90-1 CPD ¶ 519.

In its proposal, D-F did not take any exceptions to the Stewart Warner specification requirements. By letter dated November 13 to the agency, D-F confirmed that the filter which it intended to supply to the agency under the contract would meet the RFP's specification requirements. The agency found D-F to be a responsible offeror, and we have no basis on this record to question the contracting officer's affirmative determination of responsibility.^{2/}

Accordingly, the protest is dismissed.

for Andrew T. Pogany
Michael R. Golden
Assistant General Counsel

^{2/} The record also shows that, as a result of the protest, the agency is conducting testing of the D-F product, and the tests conducted to date show that D-F's product meets the specifications.