



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: R.L. Ridgell Construction, Inc.

File: B-277428.3

Date: October 8, 1997

Jeremy M. Griffin, Esq., Feith & Zell, P.C., for the protester.
David A. Hearne, Esq., Outland, Gray, O'Keefe and Hubbard, for C.B.C. Enterprises, Inc., an intervenor.
Vicki O'Keefe, Esq., and Cynthia Guill, Esq., Department of the Navy, for the agency.
Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in preparation of the decision.

DIGEST

Protest that awardee failed to meet definitive responsibility criteria before receiving award is denied where (1) under terms of solicitation, one alleged criterion was in fact a performance obligation that could be met after award; and (2) record indicates that the other criterion was met prior to award.

DECISION

R.L. Ridgell Construction, Inc. protests the award of a contract to C.B.C. Enterprises, Inc., under invitation for bids (IFB) No. N62477-97-B-3017, issued by the Department of the Navy for an extension to the fiber optic distribution network at the Naval Air Station Patuxent River and Webster Field Annex, St. Inigoes, Maryland. Ridgell argues that C.B.C. was improperly found responsible because it failed to meet definitive responsibility criteria in the IFB.

We deny the protest.

The IFB contained the following relevant provisions:

1.4.2 Installer Qualifications

Before installation, submit data documenting each installer's experience and qualifications as specified in the following paragraph.

1.4.2.1 Certification

The installer of the tube cable shall hold a current Air Blown Fiber sub-license agreement from the tube cable manufacturer before proceeding with the installation of the tube cable. Proof of

certification shall be provided to the government for approval prior to contract award.

1.4.2.2 Evidence of Experience and Qualifications

Show that the installers who will perform the work have a minimum of 2 years of experience successfully installing outside cable plant systems of a type and design similar to that specified herein. Include the names, locations, and points of contact for at least two installations of a type and design similar to that specified herein where the installer has installed such systems. Indicate the type of each system, and certify that each system has performed satisfactorily in the manner intended for a period of not less than 12 months.

Ridgell maintains that C.B.C.'s bid did not show (1) that its installer possesses the required minimum 2 years experience; and (2) that the installer possesses a current Air Blown Fiber sub-license agreement from the tube cable manufacturer. Ridgell concludes that C.B.C.'s bid should have been rejected.

These arguments are without merit. First, the 2-year experience requirement is not a definitive responsibility criterion or other requirement that had to be met as a prerequisite to award. Paragraph 1.4.2.2 (which itself is silent as to when the required information must be provided) falls under section 1.4 of the IFB, entitled "INFORMATION REQUIRED OF THE CONTRACTOR," and under subsection 1.4.2, which expressly states that data documenting the installer's experience and qualifications is required only "before installation." Given this language, C.B.C. was not required to submit the installer information prior to award; rather, we consider the installer experience provision to represent a performance obligation, enforceable by the Navy in its administration of the contract. See Southern Nevada Communications, B-241534, Feb. 11, 1991, 91-1 CPD ¶ 146 at 3. C.B.C.'s compliance with the provision is not for consideration here, since we do not review matters of contract administration as part of our bid protest function. Bid Protest Regulations, 4 C.F.R. § 21.5(a) (1997); Paging Network of Washington, Inc., B-274052, Aug. 13, 1996, 96-2 CPD ¶ 63 at 2.

Ridgell cites paragraph 6 of the IFB's Instructions to Bidders in support of its position that installer experience information was to be submitted prior to award. However, the plain language of the paragraph does not support Ridgell's argument. The paragraph states that:

Before a bid is considered for award, the bidder may be requested by the Government to submit a statement regarding his previous experience in performing comparable work, his business and technical organization, financial resources, and plant available to be used in performing the work.

The paragraph nowhere purports to establish a pre-award submission requirement for the specific installer experience and qualifications information required under the other IFB sections. Indeed, the word "may" in the first line indicates that paragraph 6 was not intended to establish a requirement at all. Rather, the paragraph apparently is aimed at the possible need to obtain general responsibility information regarding the bidder.

It does appear, as Ridgell asserts, that the sub-license certification requirement in paragraph 1.4.2.1 established a definitive responsibility criterion that C.B.C. had to meet before award. The record shows that C.B.C. provided contracting officials with a copy of the sub-license certification of its intended installer subcontractor, Aidco, Inc., on August 6, 6 days prior to award. Ridgell argues that this did not suffice to meet the requirement because there was no subcontract agreement between C.B.C. and Aidco prior to award. However, since the IFB did not require such a contractual arrangement prior to award, and did not require documentation of the legal relationship of the bidder and its intended installer, this fact had no effect on C.B.C.'s compliance with the requirement.

The protest is denied.

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