



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

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B-177660

April 24, 1973

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Aqua-Chem, Inc.  
Water Technologies Division  
P. O. Box 421  
Milwaukee, Wisconsin 53201

Attention: Mr. Ralph W. Gladbach  
Sales Manager

Gentlemen:

Reference is made to your letter of March 27, 1973, and prior correspondence, protesting against award to any bidder other than Aqua-Chem, Inc., under invitation for bids No. H00140-73-B-0358, issued by the Naval Regional Procurement Office, Philadelphia.

The invitation requested bids for the design, manufacture, shop testing, and delivery of a shell and tube type, water to water, heat exchanger in accordance with the accompanying specification. Of the nine bids received, Aqua-Chem's was seventh low. You contend that the six low bids were nonresponsive to the invitation specification and that, consequently, award should be made to Aqua-Chem.

Although the contracting officer believes the sixth low bid of the Hanning & Lewis Engineering Co. is responsive to the invitation requirements, he proposes to cancel the invitation and to negotiate the procurement under Armed Services Procurement Regulation (ASPR) 3-210.2(mii), which permits negotiation when it is not possible to draft a specification suitable for formal advertising.

Formal advertising was originally utilized for the procurement on the basis of advice from the requiring activity, the Naval Air

[Protest of Navy Contract Award for Heat Exchanger]

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Propulsion Center, that the specification was complete and that submission of technical proposals would be unnecessary. In spite of this advice, the invitation was amended three times prior to bid opening because of inquiries from prospective bidders as to the technical requirements. We are advised that serious consideration was given to canceling the invitation at that time and to resorting to competitive negotiation because of the number of questions and inquiries generated by the specification. However, it was finally decided to proceed with the formal advertisement in the expectation that all technical questions and ambiguities had been eliminated by the three amendments issued.

Notwithstanding this expectation, six of the nine bidders submitted with their bids some type of written communication concerning the technical requirements of the specification. Only the three high bidders made no comment or elaboration on the technical requirements. The technical reviewers evaluating the bids concluded that the bids of the second, fourth, and sixth low bidders did not take exception to the technical requirements, although the sixth low bidder did comment on the absence of a heat balance between the shell and tubesides of the heat exchanger and on the probability of flow induced vibrations. The second low bidder noted that it would not provide a thermal guarantee. While no thermal guarantee was required by the invitation, the statement that none would be provided raises questions about the possibility of problems existing in this portion of the specification.

The first, third, and fifth low bidders were determined to have taken exception to the technical requirement of the specification. The first and fifth low bidders refused to accept the 5 psi limit on tubeside pressure drop. The fifth low bidder also commented on the absence from the specification of a specified out temperature on the shell and tubeside. The low bidder submitted an alternate offer providing for better tube support. The third low bidder stated that it would provide no thermal guarantee. It also noted that it considered the performance requirements provided in the specification to be incomplete.

The intention of the requiring activity was to use a specification broad enough to permit the widest possible latitude in design approaches in order that no producer would be foreclosed from using

his own technically feasible design. We are advised that because the equipment to be procured is complex and generally designed specifically for the needs of each customer, it is very difficult to prepare a specification which will not require some discussion of technical requirements and acceptable approaches thereto with offerors. Because of these facts and because of the comments and qualifications submitted by six of the nine bidders (despite three amendments to the solicitation), the contracting officer has concluded that the specification as presently developed is not suitable for formal advertising.

Our Office has consistently held that an invitation for bids does not place any obligation on the Government to accept any of the bids received and that all bids may be rejected in those instances where it is determined to be in the best interests of the Government or where the specifications are inadequate or ambiguous to such an extent as to prevent a bidder from submitting a responsive bid. See paragraphs 2-404.1(b)(1) and (viii) of the Armed Services Procurement Regulation. A determination to take this course of action is primarily a matter of administrative discretion resting with the purchasing activity, and in the absence of clear proof that such discretion was abused, our Office will not object to such a decision. 50 Comp. Gen. 464, 469 - 470 (1970).

While the rejection of bids after bid opening is a serious matter and should be done only for the most cogent reasons, under the facts outlined above we would not be justified in objecting to the action that the contracting officer proposes to take.

Accordingly, the protest is denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States