

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of SUBSTATION TESTING
CO.

Under DGS Electrical Testing
Annual Service Contract

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Docket No. MSBCA 1464

November 14, 1989

Bid Protest - Specifications - An ambiguity exists where two or more reasonable interpretations of a bid specification are possible. The ambiguity in the instant solicitation involved certification of employees to perform electrical work under a definitive responsibility criteria of the IFB. Under one reasonable interpretation of the specification, Appellant met the certification criteria pursuant to the information it provided the procurement officer. Thus the Board found that the procurement officer's determination that Appellant did not meet the definitive responsibility criteria was in error.

APPEARANCE FOR APPELLANT:

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APPEARANCE FOR RESPONDENT:

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OPINION BY CHAIRMAN HARRISON

This is an appeal from a Department of General Services (DGS) procurement officer's final decision finding that Appellant was not a responsible bidder entitling it to contract award as the low responsive bidder.

Findings of Fact

1. DGS issued an invitation for bids (IFB) for a one year contract for electrical testing services at State installations throughout the State.

2. Section 2 of the specifications provides, in pertinent part, as follows:

2. QUALIFICATIONS OF BIDDERS:

A. The testing firm must have a minimum of one electrical engineer registered in the State of Maryland. The electrical engineer must be a full time employee of the testing agency and shall be responsible for all phases of testing and maintaining electrical power systems including short circuit analysis, protection coordination studies, and the evaluation of test and maintenance data.

- 1) The name and registration number of the registered electrical engineer must be submitted with the form of proposal for this contract.
- B. The testing firm must have in their full time employee a minimum of two (2) two-man test teams.
- 1) The lead technician of each team must be accredited as a Certified Electrical Test Technologist (Engineering Technician) by the National Institute for Certification of Engineering Technologist (NICET).
 - a) Equivalent certification by the National Electrical Testing Association (NETA) or certification by a major electrical equipment manufacturer thru factory training will be considered.
 - 2) The second technician of the two-man team shall be certified as an Associate Engineering technician in Electrical Testing Engineering Technology by NICET.
 - a) Equivalent certification by NETA or certification by a major electrical equipment manufacturer thru factory training will be considered.
3. Bids were due on May 30, 1989. Three bids were received. Appellant submitted with its bid a letter to Secretary Seboda of DGS dated May 23, 1989. The letter addressed Appellant's qualifications and stated:
2. The majority of STCo. test technicians received their training through in-house training both at Substation Test Co. and at various electric power companies which performed their own in-house electrical testing. Their training also included attendance at many training courses presented by various electrical equipment manufacturers (ie: G.E., Westinghouse), by electrical test equipment manufacturers (ie: Biddle, Doble) and by the IBEW, Local 26.
4. The procurement officer responded by letter of June 8, 1989 stating:
- Your submission satisfies paragraph 2A, however, your submission does not satisfy the requirements of paragraph 2B.
- To be considered for award of this contract, additional proof that would satisfy the requirements of paragraph 2B must be submitted.
5. Appellant responded by letter of June 21, 1989 stating that it meets the specifications paragraph B(1)(a) which recognizes training by "...a major electrical equipment manufacturer...." The letter detailed Appellant's training

program which consists of:

- 1] In-house training at Substation Test Co. and at various electrical power companies.
- 2] Attendance at training courses presented by various electrical equipment manufacturers (i.e., G.E. and Westinghouse)
- 3] Attendance at training courses presented by various electrical test equipment manufacturers (i.e., Biddle and Doble).
- 4] Training by the IBEW, Local 326.

6. By letter of June 26, 1989, the procurement officer found that the qualifications of the technicians submitted by Appellant failed to meet the specified certifications and therefore Appellant had been found not responsible.

7. By letter of July 3, 1989 Appellant protested the procurement officer's decision and requested reconsideration.

8. By letter of July 18, 1989, the procurement officer denied Appellant's protest.

9. Appellant filed a timely notice of appeal with the Board on August 3, 1989.

Decision

Appellant alleges that it is a responsible bidder under a reasonable interpretation of B(1)(a) of the specifications. The State contends that Appellant is not a "major electrical equipment manufacturer" and thus its in-house certification of two-man test team does not qualify under B(1)(a).

Appellant does not claim it meets the requirement of B(1) which specifies accreditation of the lead technician by NICET. To be accredited by NICET a technician must have a four year college degree and five years of field experience. He must then apply to NICET in a particular technical classification, submit credentials and references and pass an examination.

The second item, B(1)(a), provides two alternatives for the above requirement of accreditation by NICET. First, the lead technician may possess "equivalent certification" by NETA. NETA is a trade association composed of approximately thirty member companies. The association produces a test which it administers to technicians of NETA member companies. Two of Appellant's employees were once employed by a testing company that was a member company of NETA. NETA certification is a one time event but only employees of NETA member companies can be issued a certifying card. If Appellant were to become a member of NETA these two employees could be considered certified by NETA.

The requirements for certification by NICET and NETA were put into the specifications in order to allow a third-party independent certification of the test technician rather than either self-certification by the company or certification by the State. However, the State added another clause in B(1)(a) allowing for self-certification "by a major electrical equipment manufacturer thru factory training." This clause was added to permit firms such as Westinghouse and GE which have self-training and self-certification to bid on the contract. Mr. Shagague, who prepared the specifications for this contract testified:

At the time that specification was added, the requirement was added [to] the spec, the sole intent in writing it was to permit Westinghouse and General Electric to qualify to bid the project and (inaudible) and that was the sole reason at the time.

(Tr. 96).

However the specification was not written so narrowly that it excludes manufacturers other than Westinghouse and GE. Mr. Green, owner of Appellant company testified as to his interpretation of the clause:

It was my interpretation that major electrical manufacturer, I interpret this to mean any manufacturer of electrical equipment of any kind that held any prominence in the electrical manufacturing industry. It's not necessarily restricted to GE and Westinghouse but any major manufacturing or any prominent major electrical manufacturer and certification by, I did assume that the subject was training and certification would be attested to by some sort of letter that they completed some sort of course in the electrical testing industry that would pertain to our work. It is our true that the specification does not define what certification, let's say it doesn't restrict itself to any particular phase of training or any quantity of training, that's self-evident. They merely ask you for people who have taken some sort of training that they can attest to given by an electrical equipment manufacturer. Reading this I've come to (inaudible) conclusion.

(Tr. 49-50).

According to Appellant, GE and Westinghouse do not even offer certification from a specific in-house training program. These firms offer various courses and seminars in their training schools but they do not specifically certify

electrical test technologist engineering technicians. In addition to GE and Westinghouse there are at least three other major manufacturers of electrical equipment: James G. Biddle Company, the Multi-Amp Institute and Associated Research. Appellant has sent its employees to courses offered by many of these manufacturers. Upon completion of the courses, the employees were issued certificates.

We conclude that the specifications contained a latent ambiguity. The State intended the language "major electrical equipment manufacturer" to refer only to GE and Westinghouse whom the State wanted to include in the bidding process. We believe that Appellant, in reading the specifications was reasonably led to believe that certification of completion of training courses by other manufacturers, would fulfill the requirements of the specifications. Nowhere does the specification restrict certification by a major electrical equipment manufacturer to GE or Westinghouse. Furthermore there is evidence that neither GE nor Westinghouse offer the type of certification equivalent to NICET certification as contemplated by the State. An ambiguity exists where two or more reasonable interpretations of a specification are possible. Moreover, Appellant's particular interpretation need not be the most reasonable to have a finding of ambiguity; rather Appellant need only show that its reading of the specification is reasonable and susceptible of the understanding it reached. Flow Technology, Inc., B-228281, 87-2 CPD ¶633. We conclude in this case that the requirement for certification by a major electrical manufacturer was ambiguous, that is subject to two or more reasonable interpretations, and that ambiguity was not apparent until after the bid opening.

For the foregoing reasons the appeal is sustained.

