

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of THE NATIONAL)
ELEVATOR COMPANY)
Under DGS Contract No.) Docket No. MSBCA 1299
MSC-NW86-MS5)

October 6, 1986

Responsibility - Compliance with IFB requirements regarding the qualifications of bidder personnel raises an issue of responsibility. The Appeals Board will not overturn a procurement officer's determination that a bidder has sufficiently qualified and experienced personnel to perform the work unless the complaining bidder demonstrates that the procurement officer's determination is clearly unreasonable, an abuse of discretion, or contrary to law or regulation.

Evidence - The Appeals Board will deny an appeal where Appellant proffers no credible evidence showing that the procurement officer's determination that the low bidder was responsible was contrary to Maryland procurement law or regulation, or otherwise unreasonable, arbitrary, or an abuse of discretion.

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APPEARANCE FOR RESPONDENT: Michael P. Kenney
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OPINION BY MR. KETCHEN

This timely appeal is taken from a Department of General Services (DGS) procurement officer's decision denying Appellant's protest of award of the captioned contract to General Elevator Company, Inc. (General). Appellant maintains that General's bid was nonresponsive to the specification regarding service personnel and that General was not a responsible bidder.

Findings of Fact

1. On April 16, 1986, DGS issued a Request for Bids (RFB) for Project No. MSC-NW86-MS5 which was a three year contract (from June 1, 1986 to May 31, 1989) to maintain four elevators in the Edward F. Borgerding Court Building, Baltimore, Md.

2. Bids were received and opened on May 19, 1986 with the following results:

Appellant	\$15,840.00
General	\$19,966.00
Otis Elevator Co.	\$26,027.04

3. On May 20, 1986, prior to award of the contract, in a related protest under the captioned solicitation, General protested the proposed award to Appellant as the apparent low bidder. In its protest, General stated that: (a) Appellant failed to include in its base bid the cost of separately listed, recommended repairs as required by p. IV-9, ¶26 of the specifications, and (b) Appellant failed to furnish evidence of its access to a machine shop facility as required by the specifications.

4. On June 9, 1986, in a final decision addressing General's protest, the DGS procurement officer found Appellant's bid to be nonresponsive and stated that the contract was awarded to General as the lowest responsive bidder. The procurement officer's final decision regarding Appellant's bid was sustained on appeal in The National Elevator Co., MSBCA 1291 (October 1, 1986). In MSBCA 1291, the Board upheld the DGS procurement officer's decision that Appellant's bid was ambiguous and thus nonresponsive.

5. On June 16, 1986, Appellant protested award of the contract to General on the grounds that it was nonresponsive to the requirements of the specification regarding service personnel and that General was not a responsible bidder.

6. General's bid (Ex. 5 in MSBCA 1291)¹ listed by name twelve elevator mechanics and the years they had worked for five named elevator companies. These elevator mechanics had accumulated experience of more than 275 years working for these companies. General also supplied the qualifications of its project manager, who has extensive experience in elevator maintenance. General did not list any licenses possessed by its employees.

7. On July 2, 1986, the DGS procurement officer denied Appellant's protest. (Ex. 2).

8. On July 9, 1986, Appellant filed a timely appeal with this Board claiming that General's bid was not responsive and that General "is not responsible as required by COMAR regulations and the ruling of the Maryland State Board of Contract Appeals."

¹The exhibits referred to in this decision refer to the exhibits to the agency reports submitted in MSBCA 1291 and to the exhibits in MSBCA 1299. Since both appeals involve the same solicitation, we permitted DGS to reference the exhibits submitted with the agency report in MSBCA 1291 in the agency report submitted in MSBCA 1299. Where appropriate, this decision identifies the exhibits to the agency report in MSBCA 1291 by specific reference to that docket number.

Decision

Appellant maintains that General's bid is not nonresponsive and that General was not a responsible bidder based on the language used in the specification concerning service personnel which, in pertinent part, states:

- a. The bidder must satisfy the State that he is sufficiently staffed to perform the service required under the terms and conditions as set forth herein, by furnishing the Building Manager with a completed list of staff members who will perform the service under this contract.
- b. The required list shall provide, in detail, the length and type of experience of such personnel and what licenses, if any, they possess.
- c. The service personnel provided to this Center must be from the above list, and should a change occur during the term of this contract, the Building Manager and/or Maintenance Supervisor must be notified.
- d. The stipulation [sic] set forth in (b) above shall accompany any and all changes in personnel during the term of this contract.

p. IV-1 ¶2.3 (Ex. 1 in MSBCA 1291).

Appellant contends that on General's "list of Qualifications of Elevator Mechanics [Ex. 5 in MSBCA 1291] there is no mention of the length of [sic] type of experience of the personnel or what licenses, if any, they possess. It is quite possible that the personnel may not have the required experience and may not, in fact, possess any licenses."

The procurement officer in his final decision determined that General's bid was responsive to the specifications because it did in fact provide a listing of twelve elevator mechanics and the years they had worked for five named elevator companies. He also held that no license is required to perform services as an elevator mechanic. We agree that General met the IFB's requirements regarding the listing of its service personnel, although the issue raised is not one of responsiveness. Responsiveness in competitive procurements concerns a bidder's legal obligation to perform the required services in exact conformity with the IFB specifications.

Compliance with the IFB specification at issue here, regarding whether General is sufficiently staffed with experienced elevator maintenance personnel, properly concerns General's capability to perform the contract; that is, whether it is a responsible bidder.² Carpet Land, Inc., MSBCA 1093 (January 19, 1983), 1 MICPEL ¶34. Bidder responsibility is a matter for the

²Maryland procurement law defines a responsible bidder as follows:

"Responsible bidder or offeror.—'Responsible bidder or offeror' means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance." Md. Ann. Code, State Finance and Procurement Article, § 13-101(h).

procurement officer to determine. He has broad discretion in this regard. His determination that a bidder is responsible will not be overturned unless shown to be clearly unreasonable, an abuse of discretion, or contrary to law or regulation. Allied Contractors, Inc., MSBCA 1191 (August 16, 1984), 1 MICPEL ¶82. As we observed in Aquatel Industries, Inc., MSBCA 1192 (August 30, 1984) at 5-6, 1 MICPEL ¶82 at 4 (quoting from 39 Comp. Gen. 705, 711) this basic rule is explained as follows:

" . . . The projection of a bidder's ability to perform if awarded a contract is of necessity a matter of judgment. While such judgment should be based on fact and should be arrived at in good faith, it must properly be left largely to the sound administrative discretion of the contracting offices involved, since they are in the best position to assess responsibility, they must bear the major brunt of any difficulties experienced by reason of the contractor's lack of ability, and they must maintain the day to day relations with the contractor on behalf of the Government. For these reasons, it would be unreasonable to superimpose the judgment of our Office or any other agency or group on that of the contracting officials. . . ."

The responsibility requirement in the specification before us requires that the bidder demonstrate that it is sufficiently staffed to perform the required services by providing a list of its staff members who will do the work showing the length and type of their experience. Evaluation of the information provided by General about its personnel and the determination of responsibility was a matter for the procurement officer's sound discretion.

Here, Appellant proffered absolutely no credible evidence that the procurement officer's award of the contract to General based on a finding that General met the requirements of the IFB and otherwise complied with Maryland procurement law was in any way unreasonable or arbitrary. Appellant's total failure in this regard requires us to reject its naked assertions that General's bid was not responsive and that it was not a responsible bidder. There thus is no basis for concluding that the DGS procurement officer's decision to award to General was improper or an abuse of discretion. See: Xerox Corp., MSBCA 1111 (April 25, 1983), 1 MSBCA ¶48.

For the foregoing reasons, therefore, this appeal is denied.