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DECISION

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

FILE: B-204038

DATE: November 2, 1981

MATTER OF: Phoenix Power Systems

DIGEST:

While the agency has presented reasons for requiring Underwriters Laboratories or equivalent certification of bidder's product, agency has not justified need for bidder to have certification at bid opening.

Phoenix Power Systems (Phoenix) protests the requirement in solicitation No. R6-81-2045 of the United States Forest Service that the bidder be listed with Underwriters Laboratories or "approved equal." The solicitation was for electrical control panels to be installed at certain Forest Service water systems and tree cooler construction sites in Oregon and Washington. Phoenix did not bid. On September 30, 1981, an award was made on urgency grounds to United Pacific Controls, Inc.

The protest is sustained.

The solicitation provided as follows:

"Award

* * * * *

"Control Panel Manufacturers must be U.L. listed or approved equal, at the time of bid opening, to manufacture control panels to U.L. 508 Industrial Control Panels for general use. Bidders must provide their U.L. identification number or equal, and a copy of the first page of the certified procedure.

"U.L. Identification Number: _____

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"Failure to provide the U.L. or approved equal Identification Number and a copy of the certified procedure may cause the bid to be rejected as nonresponsive."

In its original protest, Phoenix contended that the requirement for Underwriters Laboratories or equivalent approval at the time of bid opening improperly prequalified bidders and was restrictive of competition. Phoenix argued that the Government's preaward responsibility procedures were adequate to determine the qualifications of prospective contractors.

The Forest Service took the position that the Underwriters Laboratories standards were necessary to insure that the equipment would be designed and constructed to comply with minimum safety standards, to insure better quality control and to comply with Oregon and Washington laws on electrical equipment. These laws require that such equipment comply with appropriate electrical safety standards through listing or labeling by an acceptable testing organization. In this regard, the Forest Service noted that electrical contractors installing control panels on its construction jobs had to obtain State electrical permits and inspections. If the Underwriters Laboratories listing were not required, the Forest Service asserted that the construction contractors might not install the panels because the State electrical inspectors could revoke licenses for installing nonlisted equipment and, in turn, "red tag" the construction project.

The Forest Service further contended that it did not have the capability to insure compliance with Underwriters Laboratories standard 508, a 70-page document of technical electrical and mechanical engineering information, because it could only inspect the end product. In contrast, the Forest Service stated that Underwriters Laboratories inspectors did, however, perform periodic inspections and checks on manufacturers to ascertain that panels did comply with standard 508.

Responding to the Forest Service position, Phoenix concedes that it is "rather normal for Government agencies to require products to be designed, tested, or manufactured in accordance with various standards and trade associations." Consequently, Phoenix states that it never objected to a contract performance requirement that the control panels be listed by Underwriters Laboratories or equivalent authority. Instead, Phoenix states that its objection was the requirement that a bidder be listed with Underwriters Laboratories or equal at the time of bid opening. In this regard, Phoenix alleges that the basic application fee for the Underwriters Laboratories listing is \$2,000 with a further expenditure of \$4,000 required for engineering expenses. While it would be willing to obtain Underwriters Laboratories certification prior to shipment, Phoenix asserts that it is an unreasonable amount to spend just for the opportunity to bid on a Government contract.

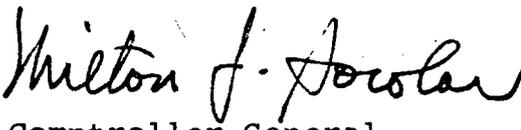
Our Office has treated similar requirements as matters of responsiveness or responsibility, depending on the wording of the solicitation. See E. P. Reid, Inc., B-189944, May 9, 1978, 78-1 CPD 346. Fisher Berkeley Corporation; International Medical Industries, B-196432; B-196432.2, January 9, 1980, 80-1 CPD 26. While the Forest Service has presented reasons for requiring Underwriters Laboratories or equivalent certification, it has not presented any argument or evidence to refute the protester's contention that it was improper to require such certification at bid opening other than "the Forest Service does not prequalify bidders."

Accordingly, the protest is sustained.

However, it is inappropriate to recommend termination of the awarded contract and a resolicitation of the requirements. Such a recommendation involves, among other things, the consideration of the seriousness of the procurement deficiency; the degree of prejudice to other offerors or the integrity of the competitive procurement system; and the urgency of the procurement and the impact of a termination on the procuring agency's mission. See System Development Corporation, B-191195, August 31, 1978, 78-2 CPD 159.

While it is clear that Phoenix did not submit a bid because of the Underwriters Laboratories or approved equal requirement prior to bid opening, we think the actual extent of the impact on the competitive procurement system is speculative. In this regard, the Forest Service states that 12 bids were received and that all but one indicated Underwriters Laboratories' certification. Further, as noted earlier, the Forest Service has made an award here on urgency grounds. The agency's written determination and finding justifying the award states that the electrical control panels will be supplied as Government-furnished property at the water systems and tree cooler construction sites. Delivery of the panels is to be accomplished between 90 to 180 days following the award of the contract. The written determination and finding emphasizes that any further delay in furnishing the panels to the ongoing construction sites could result in the construction contractors obtaining an equitable adjustment either in performance dates or in contract prices.

Nevertheless, we do recommend that, in future procurements of electrical control panels, the Forest Service adequately determine the appropriate time for a showing that Underwriters Laboratories or equivalent certification has been or will be obtained.

for 
Comptroller General
of the United States