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C. & E. SERVICES INC.
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January 6, 1993

Subject: Protest of Invitation OMS-2044-AA-GH for Muriatic
Inhibitive Acid issued 12-30-92 with closing 02-02-92

Government of The District of Columbia
District of Columbia Contracts Appeal Board
717 14th Street N.W., Suite 430
Washington, D.C. 20005

Dear Sir:

1. References:

a. Invitation Number OMS-2044-AA-GH for the purchase of
Muriatic Inhibitive Acid.

b. DCMR 27 (Contracts and Procurement) dated July 1988.

2. In accordance with the provisions of the District of Columbia
Procurement Protective Act, the subject protest of invitation OMS-
2044-AA-GH is hereby filed. The basis for this protest is outlined
with data in paragraphs below:

a. Restricted Product Name Without Basis: This invitation
restricts the items that can be bid to two brand names. Yet, the
product required is a generic muriatic acid, a commodity that is
commercially and commonly produced by many manufacturers. Chemical
equivalents are readily available. The Department of Public Works
cannot provide nor does it have any test specification, test
procedure, test criteria or product performance requirement data to
support the restricted approval of the two cited brand names.

b. Test Procedure and Criteria: There are no established
test procedures, specifications, performance specifications or
criteria for a vendor to conduct any test, nor have there been any
test criteria and procedures established. No test data is
available to support the decision to qualify the restrictive brands
specified in the invitation. Paragraph 15 of the solicitation
provides Mr. Garcia, Chief, Dewatering Branch, Bureau of Waste
Water Treatment as the point of contact for testing. Since there
are no available test criteria, product performance criteria, test
procedures and methodology, this level is incapable of objectively
qualifying a product. Additionally, Mr. Garcia is consistently
unavailable to schedule testings.

c. Price Fixing: Oakite #32 is the trade name of a product manufactured by a large business, who is ineligible to bid. Potential bidders can secure a price quote for Oakite #32 and potentially fix the bid price, permitting fraud in the procurement.

d. Faulty Specifications: Several of the specifications on page 5 of 18 do not provide sufficient specificity. Words such as "slight", "complete", and "good" are not contractually specific and are subjective. These criteria do not have measurable standards and thereby cannot be used as a performance criteria.

e. Contract Type: Reference DCMR 27 (July 88) this regulation has no provision for a requirements contract. Additionally, requirements contracts, when used, provide for the ordering of a minimum and maximum quantity in order to establish a contractual requirement. Subject invitation is fixed unit price. If a minimum and maximum contractual requirement is not established, then the acceptable contracting practice require that the quantity variance criteria apply.

f. Conditions Conflict: Reference page 12 of 18, paragraph 14. The statement requiring a product be tested and approved conflicts with page 15 of 18, paragraph 24C, which does not require a test. Additionally, there are no provisions for testing any vendors' product. There are no test criteria, test procedures or performance specifications developed to conduct any testing.

3. It is requested that action be taken to correct these deficiencies prior to allowing this procurement act to proceed.

Sincerely,



Carl Biggs, President
Chemical & Engineering Specialty

3 Enclosures

Page 5 of 18, page 12 of 18, page 15 of 18 of Invitation
OMS-2044-AA-GH

CC

Contracting Office
Department of Public Works
Office of Management Service
Contract Support Division
2000 14th Street, 2nd Floor
Washington, D.C. 20010-9182

SPECIFICATIONS5. CHEMICAL CHARACTERISTICS:

Flash point	None
Foaming tendency	Slight
Diluent	Water
Maximum solubility	Complete
Behavior in hard water	Good
Rinsability	Good
Phosphate-free	Yes
Normal working concentrations	5 to 50% by volume of water
Normal operating temperatures	Room temperature to 60 degrees C (140 degrees F)
pH at working concentrations	0 to 1 at 21 degrees C (70 degrees F)
Effectiveness of working solutions on metals	Rate of metal loss from 24 hour immersion, 10% by volume of water 49 degrees C (120 degrees F), projected for one year, not greater than:

<u>Metal (alloy)</u>	<u>mm/yr.</u>	<u>in/yr.</u>
Steel (1010)	2.32	0.09
Stainless steel (316)	1.45	0.06
Stainless steel (403)	1.81	0.07
Aluminum (3003)	65.75	2.59
Copper	2.89	0.11
Brass	0.74	0.03
Galvanized	13.21	0.52
Not less than: magnesium	184.34	7.25

- B. INDIVIDUAL ITEMS: Award, if made, on all other items will be on an individual item basis.

14. GOVERNMENT TESTING OF ITEM 1:

The contractor must be capable of supplying the product as required. Only the firms that have had their products tested and approved by the Bureau of Wastewater Treatment before the date and time set for bid opening will be qualified to bid on this solicitation.

A copy of the test results, signed and dated by an authorized District official must be submitted along with your bid. Failure to have the product tested and approved by the date and time set for submission of bids will be cause for rejection.

At no cost to the District, the contractor shall provide the following for test approval:

- a. no less than 875 gallons of test solution, 35 gallon drums;
- b. manpower to run test;
- c. pumps and hoses, and any assorted equipment needed to run test.

Tested material must remove all calcium carbonate deposits from vacuum filter drum, grid and vat. It shall produce a minimal of mist, fumes, odor and vapors. Any and all of the after effects from usage shall be of a non-toxic nature to humans. In the event that the tested material does not perform in this manner, it will be disqualified.

15. TEST APPOINTMENT:

Contact Mr. Margarito Garcia, Chief, Dewatering Branch, Bureau of Wastewater Treatment, (202) 767-8217.

16. PERFORMANCE DURING TERM:

Historically, the day-to-day operation cannot consistently duplicate test conditions, however, it is expected that the product in daily usage would approximate its performance during testing. Failure to do so shall be grounds for termination for default if such performance is not corrected within fifteen (15) days.

C. (1) If the bidder proposes to furnish an "approved equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the government and will be based on information furnished by the bidder or identified in his bid as well as other information reasonably available to the purchasing authority. CAUTION TO BIDDERS: The purchasing authority is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing authority. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing authority to (i) determine the product offered meets the requirements of the Invitation for Bids, and (ii) establish exactly what the bidder proposes to furnish and what the government would be binding itself to purchasing by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the purchasing authority.

(2) If the bidder proposed to modify a product so as to make it conform to the requirements of the Invitation for Bid, he shall (i) include in his bid a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

25. PAYMENT AND EVALUATION:

DELETE: Paragraph 13(b) on Page 4 of the Standard Contract Provisions

SUBSTITUTE: BID EVALUATION

Prompt payment discounts shall not be considered in the evaluation of bids. However, any discount offered will form a part of the award and will be taken by the District if payment is made within the discount period specified by the bidder.