



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

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B-178174

May 3, 1973

C.N.G.C. 1250
Southeastern Services, Inc.
910 17th Street, NW.
Washington, D. C. 20006

Attention: Mr. William L. Devries

Gentlemen:

Reference is made to your correspondence protesting against any award being made under invitation for bids No. F09607-73-B-0048, issued at Moody Air Force Base, Georgia.

The invitation was issued on December 19, 1972, to procure the maintenance of the buildings and grounds at Moody Air Force Base for a period of one year. For pricing purposes, the invitation divided the services to be furnished by the prospective contractor into six categories, each listing an estimated quantity of work. Each bidder was advised that:

AWARD SHALL BE MADE IN THE AGGREGATE TO THAT RESPONSIVE AND RESPONSIBLE BIDDER WHOSE TOTAL BID PRICE IS THE LOW OFFER. ONLY FIRM FIXED PRICE BIDS WILL BE EVALUATED. A BID USING A SLIDING PRICE SCALE OR SUBJECT TO ESCALATION BASED ON ANY CONTINGENCY WILL NOT BE ACCEPTABLE AND WILL BE CONSIDERED NON-RESPONSIVE TO THE TERMS AND CONDITIONS OF THIS INVITATION FOR BIDS. AWARD SHALL BE MADE ON AN ALL OR NONE BASIS. UNIT PRICES ARE REQUIRED FOR EACH BID ITEM; IF NOT GIVEN, THE BID WILL BE CONSIDERED NON-RESPONSIVE.

The invitation also stated that certain services, as noted specifically therein, were to be considered part of the bidder's overhead and, therefore, that no bid prices submitted for these specific services would be accepted nor would payment be made thereon.

You protest the procurement method used for obtaining these services. You contend that the estimated man-hours in the invitation are overstated and that the actual man-hours will leave the contractor in a loss position. You note that since pricing is on a per man-hour basis, each bidder in preparing his bid must allocate the costs of

[Procurement Procedures Protest]

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on-site management and special technical staff members, as well as on-site G & A, overhead and profit to the man-hour prices. Further, you note that the invitation contains no price adjustment clause for work volume variations. Therefore, you contend that, as gross profit on jobs of this type is typically 5 percent, if the actual work hours are even 10 percent less than the original Government estimate, the contractor will lose money in the performance of the contract. You state that it is a pattern at Moody Air Force Base to overstate the Government's estimated requirements to the detriment of the bidder. You note that under your prior contract for these services covering the period March 1, 1972, to February 28, 1973, the amount of services required by the Government was \$32,639.18 less than the estimated amount of your bid. You state that on February 27, 1973, Southeastern negotiated a 92-day extension to that contract based upon the Government's man-hour estimates only to have the activity modify the extension on March 7 by reducing its estimated requirements without a price adjustment.

We note that data on the last four yearly contract periods covering the work involved here shows that the actual man-hours utilized ranged from 92.15 to 104 percent of the estimated man-hours. Further, we note that reviews of the validity of the estimates forming a part of this invitation were conducted in early January 1973 and in March 1973. Each review confirmed the validity of the estimates. From a review of the record before us, we are unable to conclude that the estimated man-hours are overstated. Rather we must conclude that a good faith attempt has been made by the contracting activity to determine what its needs for these services will be and in view of past needs we cannot say that such determination is unreasonable. Further, we are advised that a price adjustment under the 92-day extension of your contract is being negotiated at this time due to a reduction in the estimated needs in that period. However, the contracting activity has advised that based on past experience it expects that there will be a sharp increase in requirements subsequent to the extension period because of the growing season.

Accordingly, the protest against the estimated man-hours in the invitation is denied.

You have also protested against the use of a requirements contract and the requirement that certain overhead be included without a guarantee of any amount of work. We are advised that those points were never filed with the contracting activity. Those points appear for the first time in your letter of March 26 to our Office. The proper time to have protested these issues was prior to the time for

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the submission of bids and bid opening. A protest after bid opening on matters one would reasonably be expected to have attempted to resolve during the period when bids are prepared tends to cast doubt as to the purpose and validity of the protest. 48 Comp. Gen. 757 (1969). See also section 20.2(a) of the Interim Bid Protest Procedures and Standards which provides that "Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed prior to bid opening * * *." Accordingly, the aspects of the protest referred to at the outset of this paragraph are untimely and will not be considered.

Sincerely yours,

Paul G. Denbling

For the Comptroller General
of the United States