



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: 3W American Enterprises, Inc.

File: B-274410.2

Date: December 27, 1996

Edward L. Williams for the protester.

Theodore M. Bailey, Esq., for Selrico Enterprises, Inc., an intervenor.

Diane D. Hayden, Esq., and George N. Brezna, Esq., Department of the Navy, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid that acknowledges all amendments to an invitation for bids (IFB), but which contains only the original version of the bid schedule, which was modified by an amendment which significantly changed several of the estimated required quantities, is nonresponsive because the bid is ambiguous regarding whether the bidder intends to be bound to the original or amended estimates.

DECISION

3W American Enterprises, Inc. protests the rejection of its bid and the award of a contract to Selrico Enterprises, Inc. under invitation for bids (IFB) No. N68950-96-B-0003, issued by the Naval Facilities Engineering Command, Department of the Navy, for housekeeping services at the Great Lakes Naval Hospital Complex, Naval Training Center, Great Lakes, Illinois. 3W American's bid was rejected as nonresponsive because the prices were entered on a superseded, incorrect bid schedule. 3W American contends that its bid was responsive because it acknowledged the amendment which modified the bid schedule. The protester also asserts that the awardee's bid should have been rejected for failure to acknowledge a material amendment.

We deny the protest.

The IFB contemplated the award of a combination firm, fixed-price and indefinite quantity contract and, as issued, contained a 27-page bid schedule calling for unit and extended prices for 131 line items divided into firm, fixed-price work and indefinite quantity work for a basic performance period of 1 year with four 1-year option periods. The line items on the original schedule divided both the fixed-price work and the indefinite quantity work to be accomplished into seven "classes of

services," labeled as classes A through G, and additional specific jobs. Each class required the cleaning of different areas following different schedules and associated estimated numbers of cleanings. Bidders were also to provide prices for an estimated square footage for floor stripping, waxing and sealing and carpet shampooing. The indefinite quantity work required the entry of unit and extended prices for classes of services with estimated quantities, and for an estimated square footage for floor stripping and rewaxing, carpet shampooing, cleaning of ceiling light fixtures, exterior window cleaning and carpet vacuuming.

The solicitation contained an adjustment clause, "Estimated Line Item Increase," which states, in relevant part:

"In the indefinite quantity portion of the contract, the estimated line item amount may be unilaterally increased by the [c]ontacting [o]fficer by one unit or 25%, whichever is greater. The [c]ontractor is not obligated to furnish any additional quantity under a line item beyond 125%."

Prior to bid opening, the Navy issued seven amendments to the solicitation. Amendment 0002 deleted the original bid schedule in its entirety; added a new 25-page bid schedule calling for unit and extended prices for 128 line items divided into firm, fixed-price work and indefinite quantity work for a base performance period of 7 months with four 1-year option periods; revised the estimated quantities for many of the line items; and, extended the bid opening date. The revised bid schedule for the firm, fixed-price work required prices for estimated quantities of the seven classes and for the estimated square footage of floor stripping and rewaxing, and carpet shampooing. The revised schedule for the indefinite quantity work required prices for estimated quantities of the seven classes of services and estimated quantities of floor stripping and rewaxing, carpet shampooing, cleaning ceiling light fixtures, and carpet vacuuming. Estimates on the revised bid schedule were revised upward or downward for at least half of the line items.

The agency received 14 bids by the July 12, 1996, bid opening, ranging in price from \$8,851,324.44 to \$35,429,262.87. 3W American was the seventh low bidder, at \$14,176,483.09 and Selrico was sixth low at \$14,167,053.87. Because the tenth low bidder protested to our Office, the Navy reviewed the 10 low bids, including Selrico's and 3W American's.¹ Review of the bids resulted in the rejection of the five low bids as well as rejection of 3W American's bid. As to 3W American's bid,

¹The protest was dismissed because the protester was not an interested party. Teltara, Inc., B-274410, Sept. 27, 1996.

the Navy discovered that although 3W American had acknowledged all seven amendments, it submitted its bid on the wrong bid schedule and, as a result, based its bid on the superseded, incorrect estimates for most of the line items.

For example, the original bid schedule for the indefinite quantity items estimated 2,120 cleanings for class "A" service, including the cleaning of intensive care units, emergency rooms, high traffic areas, restrooms, entrances and passageways twice per day, including holidays, 7 days per week for the base period; the revised bid schedule estimated 10,600 cleanings for these services. For class D services, which included the cleaning of offices, labs, classrooms and same patient rooms three days per week once per day, excluding holidays, the original schedule estimated 2,184 cleanings for the base period; the revised schedule estimated 14,700 cleanings.

By letter dated July 30, 1996, the Navy informed 3W American that its bid had been rejected as nonresponsive. 3W American protested to the agency the following day and, when notified that the agency had made award to Selrico, protested to our Office.

3W American states that it used the original bid documents "to be safe" because it was confused by all the amendments, sublines and options. 3W American argues that its unit prices should be controlling; hence, rather than evaluating its bid as \$14,176,483.09, the price which 3W American actually entered, and which accurately represents the total of the price entries based on the unamended quantities, the protester would have the agency recalculate its bid using the amended schedule quantities, which results in a total price substantially below Selrico's. The protester also points out that the agency's bid abstract did not record that 3W American's bid was nonresponsive. Additionally, the protester argues that Selrico's bid is nonresponsive because the bid abstract does not indicate that Selrico acknowledged amendment 0007.

Generally, where a bidder does not submit its price on a revised bid schedule listing additional work, but instead submits its bid on the original schedule, the mere acknowledgment of the amendment containing the revised bid schedule is not sufficient to bind a bidder to perform the additional work because it is not clear that the bidder has committed itself to perform the extra estimated work for the price set forth in the bid. See Harvey Honore Constr. Co., Inc., B-262071.2, Jan. 31, 1996, 96-1 CPD ¶ 30 (bid was found nonresponsive where bidder acknowledged amendment but submitted its bid on original bid schedule instead of a revised schedule provided by an amendment which increased the estimated quantity of dirt to be excavated under construction contract). Application of that rule leads us to the conclusion that the Navy properly found 3W American's bid to be nonresponsive.

Amendment 0002 increased many of the estimates of cleanings that were to be performed by the contractor, and, despite acknowledging the amendment, 3W American submitted a bid based on, for example, an estimated 2,184 instead of the actual estimated 14,700 cleanings for indefinite quantity class D services and an estimated 2,120 instead of the actual estimated 10,600 cleanings for indefinite quantity class A services for the base period. The adjustment clause, cited above, creates a quantity limit on the contractor's obligation under the indefinite quantity portion of the contract. Specifically, under this limitation, 3W American would not be required to furnish any additional quantities under the indefinite quantity portion of the solicitation beyond 125 percent of the estimated quantities. Thus, where 3W American is committed to the original estimated quantity of 2,184 cleanings for indefinite quantity class D services, 3W American would not be required to supply more than 2,730 cleanings for indefinite class D services. This is substantially below the agency's actual requirement as reflected by the amended estimated quantity of 14,700 cleanings, under which 3W American would be required to provide up to 19,375 cleanings. Since it is not clear from the bid whether 3W American intended to be committed to the amendment's larger estimates or the original schedule's lesser estimates, we can only conclude that on its face 3W American's bid does not provide a firm commitment to what the IFB as amended envisions as the required work and therefore the bid is nonresponsive.

To the extent 3W American contends that its stated unit price for each item represents its unit prices for the additional or reduced quantities, a nonresponsive bid cannot be made responsive by explanation after bid opening. Environmental Health Research & Testing, Inc., B-246601, Mar. 10, 1992, 92-1 CPD ¶ 274. Allowing 3W American to explain its bid after bid opening would, in effect, give 3W American the advantage of electing to accept or reject the contract by choosing whether to make the bid responsive. Id. Such a situation obviously would have an adverse impact on the integrity of the bidding process. Id.

Finally, as to 3W American's allegation that Selrico failed to acknowledge amendment 0007, 3W American is not an interested party to raise this issue since it would not be in line for award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7. In any event, even though the acknowledgment was not recorded on the agency's bid abstract, the record shows

that Selrico did acknowledge this amendment and that the acknowledgment was received by the agency before bid opening.²

The protest is denied.

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²3W American argues that the bid abstract is the "governing document" of the bid proceeding and, "everything that is not shown on the abstract," such as Selrico's acknowledgment and 3W American's nonresponsiveness, "should officially not exist." As noted above, the agency acknowledges the discrepancy as to Selrico's acknowledgment of the amendment and has submitted to our Office a copy of Selrico's time/date stamped acknowledgment. Failure to record the acknowledgment was merely clerical error or oversight. As to 3W American's nonresponsiveness, we note that none of the bids determined to be nonresponsive was so noted on the abstract. Under these circumstances, the clerical discrepancies on the bid abstract provide no basis to object to the Navy's award decision since the relevant determinations are otherwise supported by the agency record. A.T.F. Constr. Co., Inc., B-228060; B-228061, Oct. 30, 1987, 87-2 CPD ¶ 436.