



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Cromartie and Breakfield

File: B-279859

Date: July 27, 1998

Charles Cromartie for the protester.

George Brezna, Esq., Lis Young, Esq., and Kimberly L. Foltz, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected low quote due to suspected mistake where quote was significantly lower than the government estimate and the other quotes received and, notwithstanding agency's request, the protester failed to submit documentation or explanation which adequately supported its quote.

DECISION

Cromartie and Breakfield protests the rejection of its low quote under request for quotations (RFQ) No. N68925-98-Q-A171, issued by the Department of the Navy, for woodland debris removal at the United States Naval Observatory, Washington, D.C.

We deny the protest.

The solicitation, issued as a small business set-aside under simplified acquisition procedures, requested a lump-sum price to provide all necessary labor, material, equipment and supervision for ground maintenance services described as the removal of all dead wood, limbs, branches, trees, and vegetation throughout a 98,970 square foot area. The RFQ specified the removal of dead wood overhanging or hanging onto trees or vegetation and all vines to an elevation of 8 feet. RFQ, Woodland Debris Removal Specification ¶ 2.

The Navy received five quotations on March 31, 1998, of which Cromartie's was low at \$7,673, with the other quotes ranging from \$23,500 to \$45,000. The government estimate for the work was \$23,973.50. By letter dated April 1, the contracting officer informed Cromartie that its quote appeared to be unreasonably low and out of line with the government estimate and asked Cromartie to review its worksheets for possible errors or omissions. Cromartie was also requested to submit a price breakdown and to provide three references for tree removal work, documentation

showing that it was qualified to perform this type of work, and a project plan showing how it intended to complete the work.

By letter dated April 3, Cromartie declined to provide a price breakdown stating that the scope of work was not specific; there were no "quantitative measurements verbally or graphic illustrations" and therefore it was impossible to give a price breakdown. Cromartie provided a list of references and, as its project plan, stated that "[w]e will be using chain saws, ladders, harness belts, complete clothing, ropes and roll aways to cut down, clean up and remove debris."

By letter dated April 8, the Navy rejected Cromartie's quote as unreasonable as to price. A purchase order was issued to the second low quoter, The Davey Tree Expert Company, for \$23,500. The protester essentially argues that the rejection of its quote as unreasonably low actually constituted a nonresponsibility determination that should have been referred to the Small Business Administration (SBA) for consideration under its certificate of competency (COC) procedures.

In its report submitted in response to the protest, the agency explains that it rejected Cromartie's quote on the basis of Federal Acquisition Regulation (FAR) § 14.407-3(g)(5), which allows the rejection of a bid that is obviously erroneous, such that acceptance of the bid would be unfair to the bidder or other bona fide bidders. The agency maintains that due to the extreme disparity between Cromartie's price and the prices of other quoters and the government estimate, together with Cromartie's refusal to provide an adequate price breakdown, acceptance of Cromartie's quote would be unfair even though Cromartie had not claimed to have made any mistake.

Where, as here, simplified acquisition procedures are used, contracting agencies may properly use innovative approaches so as to award contracts in the manner that is most suitable, efficient and economical in the circumstances of each acquisition. FAR § 13.003(h); Bosco Contracting, Inc., B-270366, Mar. 4, 1996, 96-1 CPD ¶ 140 at 2. Our Office reviews allegations of improper agency actions in conducting simplified acquisitions to ensure that the procurements are conducted consistent with the concern for fair and equitable competition that is inherent in any federal procurement. Huntington Valley Indus., B-272321, Sept. 27, 1996, 96-2 CPD ¶ 126 at 2.

While the provisions of FAR part 14 are not directly applicable to a procurement under simplified acquisition procedures, FAR part 13 affords contracting officers discretion to use those provisions. Specifically, FAR § 13.106-2(b)(1) provides:

The procedures prescribed in Parts 14 and 15 are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in Part 14 and 15 may be used.

Here, the agency used the procedure under FAR § 14.407-3(g)(1), which calls for a contracting officer to immediately request a bidder whose bid contains a suspected mistake to verify the bid, and requires that the "[a]ction taken to verify bids must be sufficient to reasonably assure the contracting officer that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder." FAR § 14.407-3(g)(5) then provides:

Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless (i) the amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or (ii) there are other indications of error so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders.

A contracting officer's decision to reject an apparently mistaken bid under the authority of the above-quoted FAR provision is subject to question only where it is unreasonable. Pamfilis Painting, Inc., B-237968, Apr. 3, 1990, 90-1 CPD ¶ 355 at 3. Whether a bidder admits that it has made a mistake is not dispositive as to whether a bid may be rejected as mistaken. TLC Fin. Group, B-237384, Jan. 26, 1990, 90-1 CPD ¶ 116 at 3. Where it is clear that a mistake has been made, the bid cannot be accepted, even if the bidder verifies the bid, denies the existence of a mistake, or seeks to waive an admitted mistake, unless it is clear that the bid as submitted and intended would remain low. Trataros Constr., Inc., B-254600, Jan. 4, 1994, 94-1 CPD ¶ 1 at 3; Atlantic Servs., Inc., B-245763, Jan. 30, 1992, 92-1 CPD ¶ 125 at 3.

Here, the contracting officer appropriately exercised his discretion in applying the procedures outlined under FAR § 14.407-3(g)(5), and reasonably determined to reject Cromartie's quote as mistaken.

As noted above, the agency believed Cromartie had made a mistake because its price was significantly out of line with the government estimate and with the other quotes (300 percent). Even though the protester was apprised of the agency's concerns, Cromartie did not furnish evidence to show that there was no mistake or to indicate how it had calculated its quote, despite the agency's request for a price breakdown. Even now, when the importance of such information should be plain to Cromartie, the protester has not furnished our Office any evidence to demonstrate that its quote was not mistaken. Further, in its response to the agency's inquiry, the limited project plan that Cromartie provided did not indicate that Cromartie had calculated the cost of removing vegetation, vine and brush, a requirement that was valued at approximately 50 percent of the government's estimate and was more than Cromartie's quote for performing the entire requirement. Under these circumstances, the contracting officer reasonably rejected Cromartie's quote.

The rejection of a low bid as obviously erroneous is not a matter of bidder responsibility as contended by Cromartie. Rejection of a bid because it is too low or below cost concerns bidder responsibility only where there is no evidence of a mistake. Omni Elevator Co., B-241678, Feb. 25, 1991, 91-1 CPD ¶ 207 at 4-5; Zimmerman Plumbing and Heating Co., B-211879, June 24, 1983, 83-2 CPD ¶ 16 at 2. However, where, as here, a quote is obviously erroneous, FAR § 14.407-3(g)(5) authorizes the agency to reject it without any consideration as to whether the quoter is responsible. Accordingly, Cromartie's quote was properly rejected as mistaken without any requirement that the matter be referred to the SBA for COC consideration.

The protest is denied.

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