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DECISION



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

50857

FILE: B-182770

DATE: July 1, 1975

MATTER OF: Applied Management Sciences, Inc.

DIGEST:

Ostensible low bid was properly rejected as nonresponsive for failure to clearly offer definite, fixed price as required by IFB. Bid (1) contained projected estimated cost and fixed-fee breakdown; (2) made references to negotiated procurements; (3) listed persons authorized to conduct negotiations; and (4) stated that, upon acceptance of "proposal," Government agreed to reimburse contractor for all direct costs incurred and fixed fee earned in accordance with "general provisions" of Government agency which did not issue IFB. This, plus indicators that fixed price was being offered created ambiguity as to whether fixed price had been submitted.

Applied Management Sciences, Inc. (AMS), protests the rejection of its ostensible low bid under invitation for bids (IFB) No. 5-35017, issued by the United States Department of Commerce to provide an occupational health services program for the Social and Economic Statistical Administration. The contract for the program was awarded to the second low bidder, National Health Services, Inc.

The IFB called for the submission of a definite, fixed price for the personnel, equipment, supplies and services specified to be paid in 12 equal monthly installments. In addition to pertinent portions of the IFB document, the AMS bid contained a cover letter and two pages of additional information. The first page entitled "Projected Cost" consisted of a breakdown of the bid (according to the cover letter) which included a listing and pricing of various cost elements (e.g., direct labor) computing to a total estimated cost. Added to the total estimated cost was a fixed fee at a designated percentage followed by the figure "\$62,594.20," which was labeled "Total Fixed Price." This figure was identical to that inserted in the bidding schedule on the first page of the IFB.

Page two of the additional information, entitled "Other Administrative Data," contained, in part, the following:

"By accepting this proposal and issuing a contract pursuant hereto, the Government agrees to reimburse the Contractor for all direct costs incurred and fixed fee earned, in accordance with HEW [presumably the Department of Health, Education, and Welfare] general provisions, on a monthly basis throughout performance of services."

That page also referred to the AMS bid and the IFB as a proposal and request for proposals, respectively, and listed several AMS officers as persons authorized to conduct negotiations with respect to the procurement.

AMS contends that its inferential request for monthly payments on a cost basis, rather than on an equal basis, is, at worst, a deviation of form, not of substance. Further, the very nature of the IFB would require that incurred costs would occur equally over the term of the contract since the IFB called for the provision of a fixed level of effort. Therefore, in monetary terms, the equality factor is specifically implied throughout the IFB. Simply stated, Applied Management's position is that the language in question is a minor informality and that the bid should be considered responsive.

It is well established that the failure of a bid to offer a definite, fixed price, when required by the IFB, is a proper basis upon which to reject the bid as nonresponsive. See Lift Power, Inc., B-182604, January 10, 1965; Joy Manufacturing Company, 54 Comp. Gen. 237 (1974); B-162201, October 4, 1967. We conclude that the AMS bid was properly rejected as nonresponsive by reason of the failure of the bid to clearly offer a definite, fixed price as required by the IFB.

The above-quoted condition requiring Government payment for all direct costs incurred and fixed fee earned is patently incompatible with the submission of a definite or firm fixed price. Also, the condition raises the possibility that the Government might very well be liable for costs in addition to those concluded in the AMS "projected cost" breakdown. We recognize the AMS bid contained indicators to the effect that a fixed price was being submitted, i.e., the use of the phrase "total fixed price" following the estimated cost and fixed-fee breakdown adjacent to a figure also inserted in the bidding schedule, and the cover letter's reference to that information as a breakdown of the bid. However, the above-quoted condition, coupled with the various references to negotiated

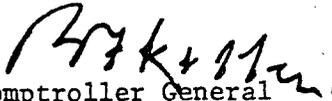
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procurements and the listing of persons authorized to conduct negotiations in conjunction with the fixed-price indicators created an ambiguity as to whether a definite, fixed price had been submitted. We also note that the condition's reference to HEW general provisions creates further doubt in that the IFB was issued by another Government agency, the Department of Commerce.

While AMS characterizes the condition as a mere inferential request for payments on a cost basis, as being, at worst, a deviation of form, our above analysis of the bid indicates to the contrary.

AMS alleges that the National Health Services, Inc., bid covered only one of the two sites where the contract was to be performed. Upon review of the bid, we find no evidence that the bid was so qualified.

Accordingly, the protest must be denied.


Deputy Comptroller General
of the United States