

DECISION



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

FILE: B-190445

DATE: January 11, 1978

MATTER OF: Vintage Services, Inc.

DIGEST:

1. Bid which unqualifiedly offers to meet invitation requirements is responsive.
2. Protester's allegations that low bidder under invitation for food service attendant services (which was awarded contract on month-to-month basis pending outcome of protest) is not meeting terms and conditions of solicitation and will not do so in future are matters of contract administration and bidder responsibility which are not for consideration by GAO.
3. Protester has not sustained allegation that disparity among bid prices may be explained by possible violations of Armed Services Procurement Regulation clauses relating to Clean Air and Water and Gratuities where protester offers no evidence or elaboration beyond mere conjectural allegation.
4. Unsupported allegation that low bidder bid collusively with another bidder, and was not unaffiliated bidder as represented in bid is not sufficient to overcome certification of independent price determination in bid.

Vintage Services, Inc. (Vintage) protests the award of a contract to any firm other than itself under invitation for bids (IFB) F 11623-77-B-0093, issued September 9, 1977 by Scott Air Force Base, Illinois (Air Force), for food service attendant services from November 1, 1977, through September 30, 1978.

Fourteen bids ranging in price from \$214,358.91 to \$370,075.84 were received in response to the IFB. The low bid was submitted by Lewis Management and Services Company (Lewis). Vintage submitted the 8th low bid at \$271,172.30. Vintage's primary contention is that the 7 lower priced bids were nonresponsive because they failed

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to include the price for "nonworking supervisors" as required by the specifications. The protester also suggests that the disparity in bid prices might be explained by "possible violations" of sections 7-103.29 and 7-104.16 of the Armed Services Procurement Regulation (ASPR) (1976 ed.), and alleges the possibility of collusive bidding between the low bidder and another firm. Notwithstanding the fact that the Air Force has determined Lewis to be the "low responsive and responsible bidder," award of the contract has been withheld pending our decision in this protest.

Section III of the specifications provides in pertinent part as follows:

"* * * The contractor shall * * * provide separate supervisors for the dining hall during each shift of operation. * * * Further, these supervisors may not be 'working leaders' as the term is defined. A 'working leader' is defined as one who physically performs the duties of kitchen police but in addition supervises or leads the rest of the crew assigned. These supervisors will not perform work except to instruct contractor personnel in the performance of their jobs."

The protester claims that the bids submitted by Lewis and 6 other firms do not include the price of these "nonworking supervisors" and therefore, are nonresponsive to the IFB. The protester also claims that Lewis, which was awarded the contract on a month-to-month basis pending the outcome of this protest, is not meeting the terms and conditions of the IFB.

In 49 Comp. Gen. 553 (1970) we stated that:

"* * * The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the terms and conditions thereof. Unless something on the face of the bid, or specifically a part thereof, either

limits, reduces or modifies the obligation of the prospective contractor to perform in accordance with the terms of the invitation, it is responsive." Id. at 556.

In the present case, Lewis unqualifiedly offered to meet all of the requirements of the IFB and there was nothing on the face of the bid limiting, reducing or modifying Lewis' obligation to perform in accordance with the terms of the IFB and specifications. Consequently we agree with the Air Force that Lewis' bid was responsive.

In regard to whether Lewis is currently providing the required services in conformance with the specifications and will do so in the future, these are matters of contract administration and bidder responsibility and are not for consideration by our Office. See NuAire, Inc., B-190383, December 16, 1977, 77-2 CPD ____.

Vintage hypothesizes that the disparity among bid prices may be explained by possible violations of ASPR §§ 7-103.29 and 7-104.16, (clauses relating to "Clean Air and Water" and "Gratuities") which were included in the General Provisions of the solicitation. Although the protester has the burden of affirmatively proving its case, see Reliable Maintenance Service, Inc., B-185103, May 24, 1976, 76-1 CPD 337, Vintage has offered no evidence or elaboration beyond the mere conjectural allegation. Therefore based on the record before us, we cannot conclude that the referenced provisions were violated.

Vintage also alleges that Lewis was not an unaffiliated corporation as indicated in Lewis' bid. Rather, the protester maintains that Lewis and Grove Contract Services (Grove) (the fifth low bidder) are both fully controlled by Tombs and Sons, Inc. and that these undisclosed relationships may have resulted in collusive bidding. In support of its allegation Vintage states that after Lewis was notified that it was the apparent low bidder on this contract, a Grove employee was sent on behalf of Lewis to recruit from the incumbent contractor's work force. According to Vintage, "the recruiter was a manager

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from Grove Service Company who stated that he did not work for Lewis Management, but had always worked for Mr. Tombs, Tombs Janitorial Service of Kansas City, that controlled both Lewis Management and Grove Services."

Concerning the possibility of collusive bidding, we note that Lewis certified that its bid prices were reached independently, without consultation with a competitor for the purpose of restricting competition, or in violation of other conditions enumerated at ASPR § 7-2003.1 (1976 ed.), which was incorporated by reference into the IFB. There is no evidence of record that indicates that the certification of independent price determination was violated. Moreover, we do not believe that the hearsay evidence submitted by the protester supports the contention of an improper arrangement between Lewis and Grove.

The protest is denied.

For the

Paul G. Stunking
Comptroller General
of the United States