

13390 PL-II

DECISION



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

[Protest of Bid Rejection as Nonresponsive]

FILE: B-196168

DATE: April 8, 1980

MATTER OF: Aqualine Environmental Services, Incorporated

DIGEST:

1. Objection to allegedly excessive solicitation requirements raised for first time after bid opening, while untimely, is significant issue and warrants consideration under GAO Bid Protest Procedures, 4 C.F.R. 20.2(c).
2. Where solicitation requires bid and evaluation on basis of replacing fire hydrants by tapping existing water mains under pressure when agency actually will permit many "dry" replacements, stated requirements exceed Government's actual needs and restricted competition. GAO therefore recommends termination of existing contract and resolicitation and bid evaluation on basis of Government's best estimate of "wet" and "dry" replacements.

Aqualine Environmental Services, Incorporated, protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. DABT 59-79-B-0084, — 20 issued by the Department of the Army. Aqualine also asserts that the requirements of the IFB exceeded the Army's minimum needs. For the following reasons, the protest is sustained on the basis of excessive solicitation requirements and resolicitation is recommended.

The IFB called for the replacement of 248 fire hydrants at Fort Pickett, Virginia. Replacement of fire hydrants can be accomplished in a "wet" or "dry" condition, depending on the need to maintain service to other locations along the water main at the time of replacement. If it is necessary to maintain the service, the contractor taps into the water line and places a bypass around the hydrant to be removed and replaced.

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If the maintenance of water service is not necessary, then the line can be turned off until the hydrants have been removed and replaced. The latter, "dry," method is significantly less expensive and takes less time than the "under pressure" or "wet" method.

Based on alleged oral Army advice that the hydrant replacements could be accomplished by the dry method, Aqualine included in its bid a statement to the effect that it would install all hydrants in the dry condition. The Army, finding that Aqualine had submitted a qualified bid which deviated from the written IFB requirements for total wet replacement capability, rejected it as nonresponsive and awarded a contract to the next higher priced responsive responsible bidder.

Since bidders were required to bid as though wet replacements were required for all 248 hydrants, Aqualine contends that this requirement exceeded the Army's minimum needs because the work could be accomplished dry by isolating particular work areas at Fort Pickett. It is clear from the record of Aqualine's pre-bid opening activity that this issue, raised for the first time after the Army rejected Aqualine's bid, was known to Aqualine prior to bid opening. While this issue should have been raised prior to rather than after bid opening and therefore is untimely under our procedures (4 C.F.R. 20.2(b)(1) (1979)), the restriction of competition caused by the Government's failure to solicit for its actual needs goes to the heart of the competitive system because any measure which incorporates more or less than the work to be contracted in selecting the lowest bidder does not obtain the benefits of full and free competition required by the procurement statutes. We believe such an impropriety merits our review. Southeastern Services, Inc., et al., 56 Comp. Gen. 668 (1977), 77-1 CPD 390. Therefore this matter is for consideration pursuant to the exception provided in our timeliness rules concerning consideration of significant issues. 4 C.F.R. 20.2(c).

Our Office has held that procurement agencies must state requirements in terms that will permit the broadest field of competition within the minimum needs required, and when the stated requirements are beyond the Government's actual needs, competition is restricted.

Gardner Machinery Corporation; G. A. Braun Incorporated -- Request for Reconsideration, B-185418, September 25, 1978, 78-2 CPD 221. In the present case, while bidders were required to bid and the bids were evaluated as though all 248 hydrant replacements were to be wet, the Army concedes that there is a probability of many dry hydrant replacements depending upon the occupancy of Fort Pickett which varies depending upon the time of the year. Accordingly, the IFB requirements overstated the actual needs of the Army, and the protest is sustained on this issue. In view of our conclusion that the solicitation was defective and should be revised, the question of whether Aqualine's bid is responsive is academic.

The Army has advised us that it has not issued a notice to proceed with performance under the existing contract. Therefore, we recommend termination of the contract and resolicitation of requirements which more accurately represent the actual needs of the Army. Since the Army does not know precisely the mix of hydrants to be replaced in a wet versus dry condition, it should require bidders to bid a job price in accordance with the Army's best estimate of the mix and also require bidders to furnish a price change factor which the Government either could deduct from the job price for each dry installation required in addition to the estimate or add to the job price for each additional wet installation.

By letter of today, we are advising the Secretary of the Army of our recommendation for termination and resolicitation.

Because this decision contains a recommendation for corrective action, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1976), which requires the submission of written statements by the agency to the Committees concerning the action taken with respect to our recommendation.



Comptroller General  
of the United States