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

FILE: B-204481 DATE: June 14, 1982

MATTER OF: American Mutual Protective Bureau

DIGEST:

> Where the contracting agency awarded a contract to a firm that was the low bidder under all possible combinations of basic and option items, and which submitted a bid guarantee adequate under all combinations, the protester's allegations of solicitation ambiguities regarding whether the option would be evaluated and inadequate bid guarantees are academic.

American Mutual Protective Bureau protests the award of a contract to any other firm under invitation for bids (IFB) No. DLACLA-81-B-0002 issued by the Defense Logistics Agency (DLA) for security guard services. The protester alleges that ambiguities in the IFB caused most of the bidders, including all of those bidding less than American Mutual, to submit inadequate bid guarantees, thus rendering those bids nonresponsive and ineligible for award. American Mutual, which contends that it submitted the lowest bid with an adequate bid guarantee, argues that it is entitled to receive award. We deny the protest.

Background

The IFB contained the following line item schedule:

"0001 Security Guard Services for the period of 1 Oct 81 through 30 Sep 82. ________

0002 Security Guard Services for the period of 1 Jan 82 through 30 Sep 82. ________

The Government has the option to award Item 0002 if award of Item 0001 is not accomplished by 1 Oct 81.

0003 Option to extend the service for 3 months. ________"

Bidders were alerted to the fact that failure to submit a bid guarantee in the amount of 20 percent of the "total bid price" would be cause for rejection as nonresponsive.

DLA reports that just prior to bid opening, American Mutual telephoned the contracting officer and requested amendment of the IFB to remove certain ambiguities it perceived in the bidding documents. American Mutual claimed that it would be impossible for the Government to determine the lowest bidder based on the IFB's stated award factors, or to determine the amount required for a bid bond, because the IFB did not make clear what combination of line items would constitute the "total bid price" upon which award and the bid guarantee requirement would be based. The contracting officer did not amend the IFB, but orally advised American Mutual that option item 0003 would be evaluated and that award would be based on bids for the total of either line items 0001 and 0003 or line items 0002 and 0003 depending upon when award could be made.

Six firms submitted bids. The three lowest were:

	0001	0002	0003
Coleman Security	$175,185.92	$131,102.72	$44,011.52
Universal Service	180,856.00	135,346.00	46,958.70
American Mutual	184,575.36	135,638.64	45,334.24

DLA awarded a contract to Coleman Security for line item 0002 only. Coleman Security and Universal Service had submitted bid guarantees that were sufficient to satisfy the requirement of 20 percent of their respective bids for line item 0002. Only American Mutual, however, furnished a bid bond equal to 20 percent of the combined prices of items 0001 and 0003, or 0002 and 0003.

Discussion

American Mutual contends that the IFB's bid guarantee requirement for 20 percent of the "total bid price" was ambiguous. The protester submits that, under the terms of the IFB, "total bid price" reasonably could be interpreted in one of two ways: either as the price bid for either of the basic line items (0001 or 0002), or as the price bid for a basic line item plus the option quantity (0001 plus 0003, or 0002 plus 0003). Based on the pre-bid oral advice it received from DLA, American Mutual submitted a bid guarantee in an amount sufficient to cover the basic item plus the option item.

DLA responds that its oral advice that the option would be evaluated to determine the low bidder was incorrect. DLA argues, however, that American Mutual should have known from the written terms of the IFB that award--and therefore the bid guarantee--would be based on the price bid for either basic line item 0001 or 0002 without evaluation of 0003.

We need not decide whether the IFB was ambiguous with regard to evaluation of the option quantity, or the effect of the erroneous oral advice, because neither had any impact on the competition. See Burns Electronic Security Services, Inc., B-191312, November 27, 1978, 79-1 CPD 1. Under all possible combinations of line items 0001, 0002, and 0003, Coleman Security is the low bidder. In all cases, American Mutual is no better than second low bidder; thus, under any circumstance, the protester is never in line to receive award. Furthermore, Coleman Security's bid guarantee, which is adequate to cover the required 20 percent of its bid for item 0002, on which the award was based, in fact is sufficient for any combination because the amount is greater than the difference between its bid price for any combination of line items and the price stated in the next higher acceptable bid for any combination. Defense Acquisition Regulation § 10-102.5(ii) (1976 ed.); see, e.g., Trans-Alaska Mechanical Contractors, B-204737, September 29, 1981, 81-2 CPD 268. Thus, Coleman Security's bid is responsive with regard to its bid guarantee under all possible line item combinations.

We note here that American Mutual does not suggest that it would have been the low bidder for item 0002 if it had not included in its bid price the additional cost of securing a bond to cover the price for the option period. In fact, the firm has advised us of its costs for bid bonds in general, and our calculations show that American Mutual would not be the low bidder even if the incremental cost is subtracted from the bid price.

In summary, DLA awarded a contract to a bidder that was low and responsive under all interpretations of an allegedly ambiguous IFB. Therefore, even if ambiguities existed in the IFB, the bidders were not prejudiced in these circumstances.

The protest is denied.

Milton J. Socolar

Acting Comptroller General
of the United States