

DECISION

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

FILE: B-221846

DATE: June 9, 1986

MATTER OF: Temps & Co.

DIGEST:

1. An invitation for bids and the award of fixed-rate, labor-hour, indefinite-quantity requirements contract for temporary clerical services is defective where the method of evaluating bids only involved the numerical averaging of hourly rates for each line item and not the extension or "weighting" of the line item prices by the government's best estimate of the quantities of hours required to determine the bid that would result in the lowest ultimate cost to the government.
2. A solicitation which calls for bidders to submit option prices must state whether the evaluation will include or exclude option prices to allow for the submission of bids on an equal basis.

Temps & Co. (Temps) protests the award of a contract to Woodside Temporaries, Inc. (Woodside), under invitation for bids (IFB) No. C66025, issued by the Federal Home Loan Bank Board (FHLBB). The procurement is for the acquisition of temporary clerical services. Temps asserts that the agency's method for evaluating bids as provided in the IFB was materially defective and, therefore, failed to assure that an award to Woodside would result in the lowest ultimate cost to the government. We sustain the protest.

Background

The IFB contemplated the award of a fixed-rate, labor-hour, indefinite-quantity requirements contract for the following labor categories: Secretary; Executive Secretary; Word Processor; Accounting Clerk; File Clerk; Receptionist; and Para-Legal (line items 001 through 007, respectively). The IFB described the type of services and qualifications required in each category and incorporated a current Department of Labor minimum wage rate determination. The IFB also set forth the estimated number of personnel that would be required in each labor category: Secretary (20);

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Executive Secretary (5); Word Processor (12); Accounting Clerk (2); File Clerk (3); Receptionist (2); and Para-Legal (3). Bidders were to bid hourly rates for each category of personnel.

The IFB advised bidders that the contemplated contract would be awarded for a 9-month base period (January 6, 1986, through September 30, 1986), with the right of the government to extend the contract for up to three additional 1-year periods. Although the IFB's schedule sought option prices, bidders were not advised as to whether the options would be evaluated in determining the successful bid.

Bids were opened on December 30, 1985. Seventeen bids were received, and upon the permitted withdrawal of the three lowest bids on the basis of mistake, the contracting officer determined that Woodside was the remaining low, responsive bidder. According to the FHLBB's administrative report, bids were evaluated by numerically averaging the hourly rates bid for the base period only. Woodside submitted the following hourly rates for the base period:

001	Secretary	\$12.15
002	Executive Secretary	12.83
003	Word Processor	13.50
004	Accounting Clerk	6.41
005	File Clerk	6.08
006	Receptionist	6.75
007	Para-legal	9.45

The numerical average of these rates was \$9.59 (hourly rate total of \$67.17 divided by 7), the lowest average among the remaining bids. (Temps' average hourly rate was \$11.14.) Accordingly, upon a determination of Woodside's responsibility as a prospective contractor, the firm was awarded the contract on January 15, 1986. However, after examining the bid documents, Temps then protested the award to this Office on January 30.

Protest Position

Temps raises numerous allegations with respect to the conduct of the procurement, but the firm's essential ground of protest is that the agency's method of evaluating bids as set forth in the IFB was so defective that the FHLBB had no assurance that an award to Woodside would result in the lowest ultimate cost to the government. Specifically, Temps argues that the numerical averaging approach was improper because a bid that proposed high hourly rates for the high-volume labor categories (i.e., Secretary and Word Processor) and low hourly rates for the low-volume categories would be more favorably evaluated under that approach than a bid offering more balanced hourly rates for all labor categories. In the firm's view, the proper approach would

have been to evaluate bids on the basis of "weighted" prices--that is, hourly rates extended by the estimated number of personnel required in each labor category.

Moreover, Temps notes that the IFB failed to advise bidders whether the options would be evaluated in determining the successful bid, and, consequently, that bidders may not have competed on a fair and equal basis for this reason. The firm urges that it would have displaced Woodside as the remaining low bidder if the agency had evaluated both its base period and option prices under the "weighted" approach.

Analysis

At the outset, we agree with the FHLBB that Temps' protest is untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), specifically provide that protests based upon alleged improprieties in an IFB which are apparent prior to bid opening must be filed prior to bid opening in order to be considered. See DSG, Ltd., B-218948, July 29, 1985, 85-2 CPD ¶ 105. In our view, the issues now raised by Temps should have been apparent to the firm prior to the December 30, 1985, bid opening, and, therefore, its protest, filed one month later, was clearly untimely. Nevertheless, because we believe that the solicitation was materially defective by not providing for the proper evaluation of bids, we will consider the protest under the "significant issues" exception to our basic requirement for the timely submission of protests. 4 C.F.R. § 21.2(c). Exercise of this limited exception is appropriate in these circumstances where this is the first instance when the FHLBB is the affected "federal agency" in a bid protest matter, and where the agency's potential exercise of its right to extend the contract for a significant period could result in substantially increased costs to the federal government. Therefore, our consideration of the protest will provide useful guidance to the agency, and it will enable corrective action to be taken with minimal disruption to the government.

An IFB must clearly state the basis on which bids will be evaluated for award, and we have recognized that a properly constructed solicitation for an indefinite-quantity requirements contract must state that the evaluation will include estimated quantities as a factor. The rationale is that any award in an advertised procurement must be made to the responsive, responsible bidder whose submitted price is the lowest based on a measure of the total work to be awarded. A to Z Typewriter Co. et al., B-215830.2 et al., Feb. 14, 1985, 85-1 CPD ¶ 198; aff'd on reconsideration, B-218281.2, Apr. 8, 1985, 85-1 CPD ¶ 404. Where the method for evaluating bids provides no assurance that an award will

in fact result in the most favorable cost to the government, the IFB is materially defective. See North-East Imaging, Inc., B-216734, Aug. 28, 1985, 85-2 CPD ¶ 237.

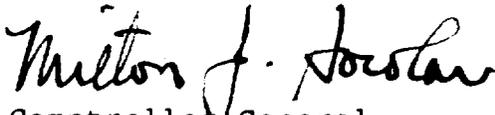
Thus, we have held that an IFB which indicated that selection for award would be made on the basis of the sum of the offered unit prices was defective per se, since there was a failure to apply the estimated amount of services against the item prices in determining the low bid. Allied Container Manufacturing Corp., B-201140, Mar. 5, 1981, 81-1 CPD ¶ 175. Here, the agency not only failed to provide a meaningful estimate of the quantity of services required, but also attempted to determine the lowest bid through a numerical averaging of the hourly rates bid. More importantly, we also question why the agency expressed its estimates in terms of the number of personnel that would be needed. Rather, since the IFB clearly contemplated a fixed-rate, labor-hour contract, a properly constructed solicitation would have expressed the agency's estimated requirements in terms of the total number of labor hours or personnel days for each personnel category, rather than providing only the numbers of personnel estimated to be required. See Ross Aviation, Inc., B-219658, Dec. 11, 1985, 85-2 CPD ¶ 648. In this regard, there was nothing in the IFB to indicate to bidders that these temporary employees would work on a full-time basis, since the FHLBB has in fact stated that the services were to meet an urgent requirement "during this particularly hectic period in the savings and loan industry" A proper solicitation would have provided for the evaluation of bids by extending the bidders' hourly rates for each line item by the estimated hours to determine the low bidder.^{1/} Thus, because Woodside's submitted hourly rates had no direct relationship with the total amount of work to be performed, see KISS Engineering Corp., B-221356, May 2, 1986, 86-1 CPD ¶ _____, the agency simply had no assurance that an award to the firm would result in the most favorable cost to the government.

Moreover, we believe the IFB was also defective by failing to advise bidders as to whether the submitted option period prices would be evaluated in determining the successful bid. The Federal Acquisition Regulation (FAR), § 17.203(b) (FAC 84-5, Apr. 1, 1985), provides that a solicitation which calls for bidders to submit option prices must state whether the evaluation will include or exclude option prices. See Browning - Ferris Industries of the South Atlantic, Inc. et al., B-217073 et al., Apr. 9, 1985, 85-1 CPD ¶ 406. Thus, by not knowing whether bids would be evaluated with regard to either aggregate prices or the base period price alone, the bidders here may not have submitted bids on an equal basis.

^{1/}The estimate used must be based on the best information available to the agency. D.D.S. Pac., B-216286, Apr. 12, 1985, 85-1 CPD ¶ 418.

On the record before us, we conclude that the IFB was materially defective. Accordingly, by separate letter of today, we are recommending to the Chairman of the FHLBB that no options be exercised under Woodside's present contract and that any remaining requirement be resolicited under a properly constructed IFB.

The protest is sustained.


Acting Comptroller General
of the United States