Hagzarian

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Orange Shipbuilding Co., Inc.; Fredeman Shipyard, Inc.

File: B-222384.3; B-2.2384.4

Date: September 29, 1986

DIGEST

1. Although agency canceled IFB after bid opening because it believed that an ambiguity between the bid schedule and a portion of the specifications confused bidders as to what work the "lump sum bid" was intended to cover, GAO recommends that the solicitation be reinstated because the low bidder priced all items of work required by the solicitation in its bid; the solicitation accurately represents the agency's needs, so that award to the low bidder would fulfill the agency's requirement; and there is no prejudice to the other bidders.

2. Protest that lower bids were nonresponsive because they did not include bid bonds and that cancellation of IFB ostensibly for other ambiguous requirements in fact was motivated by desire to avoid contracting with protester has no merit, since invitation did not require bonds.

DECISION

Orange Shipbuilding Co., Inc. (Orange), and Fredeman Shipyard, Inc. (Fredeman), protest the cancellation of solicitation No. DAHA41-86-B-0009, issued by the National Guard Bureau on February 13, 1986, for the towing, drydocking and overhaul (cleaning, painting and repairs) of a barge. The agency advises that the solicitation was canceled after bid opening because of an ambiguity concerning the pricing provisions.

The protest by Orange of the cancellation is sustained; Fredeman's protest, however, has no legal merit.

Six bids were received under the solicitation. Orange's low lump-sum bid was $31,500, the next low bid was $50,977, and Fredeman submitted the fourth lowest bid of $88,688.

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The National Guard Bureau advises that it canceled the solicitation because of an ambiguity resulting from an apparent inconsistency between the bid schedule--which requested a single "LUMP SUM BID"--and the specifications for drydocking, cleaning, painting and repairing the barge, which requested unit prices for several "indefinite" items. The solicitation bid schedule contains a line on which a bidder is to designate a "LUMP SUM BID." However, the solicitation specifications also request unit prices for the "indefinite" items .04 "Hull Plate Renewal and Structural Repairs (Indefinite)" and .05 "Welding (Indefinite)." Specification .04 requests a price per pound for the estimated quantity of 2,500 pounds of medium grade steel required for repair of the underwater hull plate and related structures, and a price per pound for the estimated quantity of 2,000 pounds of medium grade steel required for repairs for the above "deep load line" hull plate and related areas. Specification .05 requests the price per linear foot of weld for the estimated 500 linear feet of weld required for repair of the hull area.

The record indicates that the contracting officer, by requiring a "LUMP SUM BID" in the bid schedule, intended bidders to multiply their unit prices for the indefinite items by the estimated quantities contained in the solicitation and then include the totals for these items as part of the lump-sum price. There was no clear statement in the solicitation, however, concerning the relationship between the bid schedule and the unit prices requested for the indefinite items.

Orange submitted a lump-sum bid of $31,500 in the bid schedule, and underneath this bid it inserted the following:

> "NOTE Prices for 004 hull plate renewal and 005 welding are indicated on page 8 of the specification attached hereto."

On the pertinent specification page Orange inserted a price per pound of $1.60 for the medium grade steel renewal for the underwater areas of the barge and $1.50 for the medium grade steel renewal for the above deep load line areas (specification .04). In addition, Orange specified a price per linear foot of weld (specification .05) of $6.00. In a post-bid opening letter to the contracting officer, Orange clarified the notation accompanying its lump-sum bid, advising the contracting officer that its lump-sum price of $31,500 did not include the indefinite items in the specifications, which were quoted as "extras" on the specification page.

The agency canceled the solicitation because, in its view, it was evident from Orange's bidding approach that the way bids were expected to be calculated was not clear from the invitation.

ORANGE'S PROTEST

Orange argues that the solicitation was not ambiguous and contends that it bid in a manner consistent with the terms of the solicitation. Orange asserts that, in any event, when the unit prices that it bid in the specifications are multiplied by the estimated quantities set forth, the total price for these items is $10,000 which, added to its lump-sum bid of $31,500, results in a total bid of $41,500, $9,477 lower than the next low bid of $50,977.

Even accepting the agency's view that the solicitation did not indicate clearly the contracting officer's apparent intent that the prices entered in the spaces provided in specifications .04 and .05 were to be included in the lump-sum bid price, we do not believe that cancellation of the solicitation was justified.

A contracting officer must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(a)(1) (1985). Although a solicitation may be deficient in some way, the deficiency does not always require cancellation after bid opening if award under the IFB would meet the government's actual needs and there is no showing of prejudice to other bidders. Pacific Coast Utilities Service, Inc., B-220394, Feb. 11, 1986, 86-1 C.P.D. ¶ 150. Here, the specifications extensively describe the required drydocking, cleaning, painting and repairing of the barge and the agency does not suggest that the solicitation does not fully and accurately set forth the tasks required in the drydocking and overhaul of the barge. It is also clear that Orange submitted prices for all the work to be performed, including the indefinite items, albeit not in the precise form intended by the contracting officer, so that the firm would be obligated to furnish all items if awarded the contract at $41,000; as discussed below, we believe this obviously was the total price Orange intended. Thus, the agency would meet its needs under the solicitation by accepting Orange's bid, since Orange has provided the requested prices.

We note here that the agency also states that, in any event, Orange is not eligible for award because by "excluding" prices for the hull plate renewal and welding from its lump-sum bid, Orange submitted a nonresponsive bid. We disagree, however. Responsiveness concerns whether a bid constitutes an offer to perform without exception the exact thing requested in the solicitation. Central Mechanical Construction Co., B-220594, Dec. 31, 1985, 85-2 C.P.D. ¶ 730. Orange has not in its bid taken exception to any of the requirements set forth in the solicitation and has not attempted to limit or modify its obligations. The bid thus is responsive. See Frontier Contracting Co., Inc., B-214260.2, July 11, 1984, 84-2 C.P.D. ¶ 40 and Energy Maintenance Corp., et al., 64 Comp. Gen. 425, 429 (1985), 85-1 C.P.D. ¶ 341.

Moreover, Orange's total price for the work was clearly ascertainable from its bid. Orange apparently recognized that the solicitation made inconsistent requests for pricing information. Orange resolved the inconsistency by indicating in its bid that the lump-sum price did not cover the indefinite items for hull plate renewals and welding, and stated that these prices were contained on the specification page. Orange's bid price could be readily calculated by adding the lump-sum bid of $31,000 and $10,000, the total of the extended prices for the indefinite items. Thus, Orange's bid was $41,000, which is low. In this respect, award to Orange does not prejudice the other bidders, since the next low bid was more than $50,000 and, depending on the bidders' interpretation of the pricing provisions, their prices would either remain the same or increase.

Under these circumstances, we see no compelling reason to cancel the solicitation. We therefore sustain Orange's protest and recommend award to Orange, if otherwise proper.

FREDEMAN'S PROTEST

Fredeman submitted the fourth low bid in the amount of $88,688. Fredeman contends that the solicitation was obviously canceled in order to avoid awarding the contract to it as the low responsive bidder. Fredeman apparently believes that it submitted the only responsive bid under the solicitation since it was the only bidder that submitted a bid bond with its bid.

The solicitation does not contain any requirement that bidders furnish bid bonds with their bids. The only provision in the solicitation concerning bonds is Department of Defense Federal Acquisition Regulation Supplement (DFAR), 48 C.F.R. § 252.217-7108 (1978), which is incorporated by reference into the solicitation. This regulation provides in pertinent part that if a solicitation requires a bid bond to be furnished, the contractor may furnish instead an annual bid bond or an annual performance and payment bond or evidence of either annual bond. That clause further provides that if bonds are not required by the solicitation the government reserves the right at the contracting officer's discretion to require a performance and payment bond.

Thus, neither DFAR, 48 C.F.R. § 252.217-7108, nor any other provision in the solicitation, expressly required bidders to furnish a bid bond.

The agency therefore properly determined that the bids other than Fredeman's were responsive, and Fredeman's challenge to the cancellation, which is based solely on its belief that only its bid was responsive, has no merit.

for Milton J. Socolar
Comptroller General
of the United States