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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hammitt Corporation

File: B-224220

Date: February 10, 1987

DIGEST

Bid that failed to include bid bond is nonresponsive, notwithstanding agency's evaluation of bid as below \$25,000 threshold for bonding requirement, because agency's evaluation was in error and threshold was exceeded.

DECISION

Hammitt Corporation protests the award of a contract for support of approximately 200 self-contained gas fired infrared heaters being installed in 11 animal/bird barns at the New York Animal Import Center, including the installation of underground gas lines, and for propane fuel, under U.S. Department of Agriculture (USDA) invitation for bids (IFB) APHIS-6-0061. According to Hammitt, USDA ignored a bid bond requirement in selecting Porco Gas Services, whose bid failed to include such a bond and was therefore nonresponsive. We sustain the protest.

Where an IFB requires a bid bond, the requirement is material and failure to furnish, by the time of bid opening, a bond conforming to the solicitation renders the bid nonresponsive. Nova Group, Inc., B-220626, Jan. 23, 1986, 86-1 CPD ¶ 80.

USDA defends its award to Porco by arguing that, although a bid bond was required by the solicitation, it was not required by law, because the Porco bid was under \$25,000. The agency also states that the protester's evaluated bid price of \$42,900 for installation was unreasonably high when compared to Porco's bid of \$6,509.82 for the same work, or to the government estimate of \$8,200.

We agree with Hammitt that USDA's defense is without merit. The IFB, in material part, provides that:

"If a contract exceeds \$25,000 each bidder must submit a bid guarantee in the amount of 20 percent of the total bid price, but in no event shall the penal sum exceed \$3 million."

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Porco's bid was not below \$25,000 if evaluated in accordance with the IFB. The IFB provided for award based on the aggregate price for two line items: line item 1, which included installation of the underground propane gas system, and line item 2, which included the propane tanks, appurtenances, and gas supply for 1 year. The IFB provided that the total price for item 2 was to be calculated by extending the unit price per gallon by an estimated consumption of 65,000 gallons per year for the 11 buildings to be served. USDA disregarded the IFB evaluation scheme by computing fuel cost on the basis of the expected initial delivery only, rather than on the basis of its stated first year requirement. Properly extended, Porco's first year price for gas (at \$0.59 per gallon, which includes the cost of furnishing and installing the tanks) comes to more than \$38,000.^{1/}

Agencies are required to make award in accordance with the evaluation scheme set out in the IFB. Summerville Ambulance, Inc., B-217049, July 1, 1985, 85-2 CPD ¶ 4. So evaluated, Porco's bid (which came to \$44,859.82 for both line items) exceeded \$25,000. Thus under the solicitation's terms a bid bond was required. Since there was no bond, the bid was nonresponsive and should have been rejected. Nova Group, Inc., B-220626, supra. Further, the fact that USDA viewed Hammitt's bid for installation of the underground gas pipe as unreasonably high,^{2/} while perhaps justification for its rejection and the resolicitation of the requirement, is not relevant in determining the responsiveness of Porco's bid.

The protest is sustained.

The record shows that award was made after September 26, 1986, the date on which USDA was notified of the protest by our Office. The documentation executed to justify the award refers only to a need for the supplies being procured, and thus, does not conform to the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(c)(2)(A) (Supp. III 1985),

^{1/} USDA based its evaluation on 85 percent of 500 gal. per building, which is the amount it apparently expected to be furnished initially. We are aware of nothing in the IFB that indicates that bids would be evaluated other than on the basis of the entire 65,000 gal. requirement.

^{2/} Hammitt's total bid, including fuel, comes to \$42,900 plus \$0.60 per gal. times 65,000 gal., or \$81,900.

which permits award in the face of the protest only upon a written finding by the head of the procuring activity that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for our decision. Further, it does not appear that USDA complied with 31 U.S.C. § 3553(c)(2)(B), which requires that our Office be notified of such findings before award is made.

We recognize that the gas lines have been installed. In the circumstances, we recommend that USDA terminate the contract improperly awarded to Porco, and reprocure its remaining fuel requirements. In view of the fact that performance has been partially completed, Hammitt is awarded its bid preparation costs and the cost of pursuing its protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1986). Additionally, USDA should take action to ensure full compliance with the CICA award suspension provisions in future cases.

for 
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