



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Harry Keith & Sons, Inc.

File: B-226479

Date: June 11, 1987

DIGEST

Where bidder who was unwilling to include in its lump-sum price for the removal and disposal of chemically-contaminated materials that portion of the work whose extent could not be determined until during contract performance, and expressly so conditioned its bid, agency properly rejected bid as nonresponsive since it did not offer to perform the work described by the specifications for a firm, fixed price.

DECISION

Harry Keith & Sons, Inc. (HKS) has protested the award of a contract by the General Services Administration (GSA) to Integrated Waste Systems, Inc., under invitation for bids (IFB) No. GS-11P87MKC2007, for removal and disposal of contaminated materials from six sites in Washington, D.C.

HKS contends that its low bid should not have been rejected as nonresponsive. We deny the protest.

GSA has identified five old outside electrical transformer vaults and an open field which have been chemically contaminated, primarily with polychlorinated biphenyls (PCBs). The objective of this contract is the removal and disposal of the contaminated material and the backfilling of the excavated areas with topsoil. Included with the IFB for the bidders' information was a consultant's report, 22 pages in length, which described the technique used by that firm

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in sampling soil at the sites and which provided the results of soil analyses and the consultant's recommendations as to the area and depth of excavation.

The IFB specifications required the contractor to provide all labor and equipment necessary for the:

"removal, to ten parts-per-million (or less), transportation and final disposal . . . of [PCB] contaminated soil (a minimum of 138 cubic yards), contaminated concrete (a minimum of 118 cubic yards), approximately 80 linear feet of eight-foot high chain-link fence and approximately 1 cubic yard of debris (bottles, wood, cable, wire, etc.)."

The specifications also stated that "the contractor's work" included the following task:

"After excavation, provide analysis of PCB residue in the remaining soil After review of the test results by the Government and the Contractor, additional excavation may be required until the remaining soil content is certified to be at a level below 10 parts per million PCB"

The IFB requested bidders to submit fixed price, lump-sum bids for all the required services and stated that the low bidder for purposes of award would be the low, responsible bidder offering the lowest price for the "base bid" item, which was the aggregate of the required services.

Bid opening was on February 4, 1987. Four bids were received ranging in price from HKS' apparent low bid of \$209,495 to a high bid of \$497,000 with intermediate bids at \$287,500 and \$333,000. Adjacent to its bid price of \$209,495 HKS inserted the following note:

"The total amount bid includes all work per the specifications with the following conditions. Includes disposal of 258 cubic yards of contaminated soils, concrete, fencing materials, and debris. One cubic yard is equal to one ton. Any amount removed in excess of 258 tons at the Government's request will be additional work and charged at the rate of \$785.00 . . . per cubic yard.

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Includes disposal of 100 gallons of contaminated water Additional contaminated water shall be considered extra work and charged at the rate of \$15 per gallon"

GSA's contracting officer determined that HKS' note constituted a material qualification of the bid and rejected the bid under authority of Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-2(d) (1986), which provides that a bid shall be rejected when the bidder imposes conditions that would modify the IFB's requirements, for example: a bid condition which protects against future changes in conditions, such as increased costs.

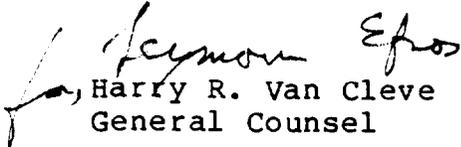
HKS argues that it did not "qualify" its bid because it provided information by the use of which all the work required under the contract could be priced at the time it is ordered by the government. It concedes, however, that its price of \$209,495 included only the removal and disposal of the minimum quantity of material identified in the specifications and that the removal of any material beyond that would be the subject of additional, separate charges at unit prices set forth in its bid. It bid in this manner, HKS says, for the "protection of both parties to the contract" because both the IFB specifications and its own experience suggested that some indefinite, additional amount of work probably would be required.

The rejection of HKS' bid as nonresponsive was proper. The IFB clearly solicited fixed-price, lump sum bids for the removal and disposal of PCB-contaminated material from six sites until analyses showed the contamination in the remaining soil was below a certain level. This work included the removal of a certain minimum amount of material; it could encompass an additional, indeterminate quantity depending on the results of soil analyses.

Those firms that bid without qualification offered to complete the project, including any required additional excavation, for a firm, fixed price ascertainable at bid opening. HKS, however, expressly conditioned its bid to protect itself from the contingency of performing work beyond the minimum specified for a fixed price. What it would have cost for HKS to perform this contract therefore could not be determined with certainty at the time bids were opened and evaluated for award. A bid which does not unequivocally offer to perform the work required by the solicitation specifications at a firm, fixed price is

nonresponsive and must be rejected. Epcon Industrial Systems, Inc., B-216725, Dec. 27, 1984, 85-1 C.P.D. ¶ 2. The agency therefore properly rejected the bid.

The protest is denied.


Harry R. Van Cleve
General Counsel