



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Niedermeyer-Martin Company
File: B-226623
Date: July 8, 1987

DIGEST

1. Protester's contention that it should have received a partial award for 600 units of wood piling based on its low unit price is without merit where the protester conditioned its price for the last 600 units on receipt of award of the first 600 units at higher prices, and an aggregate award to the protester would have resulted in an award price of \$2,094 more than the combined prices of the multiple awards made to other bidders.
2. Solicitation permitting bids for less than the total 1,200 unit solicitation quantity and providing that award quantities based on less than the total quantity will be prorated equally to each of the four delivery dates, cannot reasonably be interpreted as requiring bid prices to be based on 300 piece lots, i.e. the total required quantity (1,200), divided by the four deliveries; allegation of solicitation ambiguity is rejected where it is based on such an unreasonable interpretation.

DECISION

Niedermeyer-Martin Company protests the multiple awards made to McCormick & Baxter Company and North Pacific Lumber Company under invitation for bids (IFB) No. DLA-720-87-B-0163, issued by the Defense Logistics Agency (DLA) for a total of 1,200 pieces/units of preservative-treated wood piling for use in coastal waters. The protester principally argues that it should have received a partial award based on its low price for 600 units and, alternatively, that because of the ambiguous and misleading nature of the solicitation it was prevented from competing equally.

We deny the protest.

The solicitation bid schedule provided one line item for the total 1,200 pieces and requested a unit price and extended total amount. The solicitation neither required nor

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prohibited all or none bidding; it provided for the evaluation of bids for multiple awards; and it reserved the government's right to make that combination of multiple awards determined to result in the lowest aggregate cost. The IFB also provided that delivery was to be in lots of 300 each at four 30-day intervals after award, and that if awards were made for less than the total solicitation quantity, delivery would be prorated equally to each of the four delivery dates.

McCormick & Baxter offered 800 pieces of wood piling at \$368.90 per unit and 400 pieces at \$396.20 per unit. North Pacific offered 1,200 pieces at \$374.75 per unit. Niedermeyer-Martin offered the "first 300 pieces at \$378.89 per unit, the second 300 pieces at \$374.69 per unit, and the last 600 pieces at \$368.40 per unit." In other words, Niedermeyer-Martin conditioned its price for the last 600 units on receipt of an award for the first 600 units.

The conditional nature of Niedermeyer-Martin's bid was not noted on the bid abstract and, initially, the agency erroneously believed that the lowest aggregate price for the supplies could be achieved by making multiple awards to Niedermeyer-Martin for 600 pieces at \$368.40 per unit and to McCormick & Baxter for the balance of the units at \$368.90 per unit. On March 2, the agency requested and received confirmation from Niedermeyer-Martin of the prorated delivery schedule. At some point after this, the agency realized that the \$368.40 bid price offered by Niedermeyer-Martin applied only to the bidder's last 600 offered units and was conditioned upon receipt of award of the first 600 units at the higher quoted prices. Subsequently, the agency made a revised determination of the lowest aggregate award combination and made multiple awards to McCormick & Baxter for 800 units at \$368.90 per unit and North Pacific for the balance of 400 units at \$374.75 per unit. The total aggregate price of the combined awards was \$445,020.

The protester contends that it should have received an award for 600 units based on its low \$368.40 bid for "the last 600 pieces."

We have held that sealed-bid contracts must be awarded on the basis of the government's best price advantage, whether that advantage arises from awarding a single contract or awarding multiple contracts, and that where multiple awards are not prohibited by the IFB and would result in the lowest overall cost, multiple awards are to be made. Connie Hall Co., B-223440, July 9, 1986, 86-2 CPD ¶ 52.

In bringing its protest, Niedermeyer-Martin simply ignores the manner in which it presented its bid. We agree with DLA

that, because of the conditional nature of the protester's bid, award could not be made at its low offered price of \$368.40 per unit for 600 pieces, as the protester suggests, unless it also received an award for the first 600 pieces at the higher offered prices. An aggregate award to Niedermeyer-Martin for all 1,200 units, however, would have resulted in a total price of \$447,114, or \$2,094 more than the combined prices of the multiple awards made. Since the lower multiple award price obviously would be to the government's best advantage, as required under the above standard, the multiple awards made by the agency were proper.

Niedermeyer-Martin alternately complains that because of the alleged misleading and ambiguous nature of the IFB, it believed quotes were permitted only in 300 piece lots to correlate to the total quantity required divided by the four scheduled deliveries. According to the protester, if it had known this was not the case, it would have quoted lower prices, based on lower obtainable freight rates. This argument is without merit.^{1/}

The mere allegation that a solicitation is ambiguous does not make it so. Telelect, Inc., B-224474, Sept. 25, 1986, 86-2 CPD ¶ 355. A solicitation is ambiguous in a legal sense only where, when read as a whole, it is susceptible of two or more reasonable interpretations. The Owl Corp., B-224174, Dec. 23, 1986, 86-2 CPD ¶ 706. Our Office will reject allegations concerning ambiguous solicitation provisions where those allegations are based on an unreasonable interpretation of the solicitation. American Indus., B-223530, Oct. 15, 1986, 86-2 CPD ¶ 429.

We find nothing in the solicitation supporting an interpretation that bids were allowed only in 300 piece lots. Niedermeyer-Martin's interpretation is based on the IFB provision stating that where an award is made for less than the full 1,200 unit requirement, deliveries will be spread over the four delivery periods equally. This is no more than a delivery provision, however, and in no way purported to direct the manner in which bids prices were structured.

^{1/} Although alleged ambiguities in a solicitation ordinarily must be protested to our Office before the solicitation's closing date, this is not the case were, as here, the protest is based on a latent ambiguity, that is, where the protester apparently was unaware of a different agency interpretation. See Window Systems Engineering, B-222599, Aug. 27, 1986, 86-2 CPD ¶ 230.

This being the case, we find no reasonable basis for a bidder to assume from this provision that, because deliveries would be spread equally over the delivery dates, the offered quantities must be priced based on four equal lots; the protester has not attempted to explain this alleged nexus.

Finally, the protester alleges that the agency improperly held negotiations with bidders, including itself. There is no evidence that this is the case. The record indicates only that the agency requested and received confirmation of the prorated delivery schedule from the protester, but that no change was made to the bid. This is not improper. There is no evidence that improper discussions were held with the awardees or the other bidders.

The protest is denied.



 Harry R. Van Cleve
General Counsel