



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rusty's Services

File: B-228871

Date: December 7, 1987

DIGEST

1. In a firm, fixed-price requirements contract, bid was not ambiguous, and agency's rejection of it as nonresponsive was improper where bidder inserted in its bid a notation providing for a discount to the government, and where, even without the discount, bidder is lowest, responsible bidder.

2. To be responsive, a bid must represent an unequivocal offer to provide the product or service as specified in the invitation for bids, so that acceptance of the bid will bind the contractor to meet the government's needs in all significant respects.

DECISION

Rusty's Services protests the rejection of its apparent low bid as nonresponsive and the award to Geisman Seeding Service (Geisman), under invitation for bids (IFB) No. DAKF06-87-B-0083, issued by the Department of the Army. The contract is for fertilizing, seeding and mulching designated areas located within the geographical boundaries of the Pinon Canyon Maneuver Site, Fort Carson, Colorado. Performance of the contract has been suspended pending our decision on the protest.

We sustain the protest.

The IFB contemplates the award of a firm, fixed-price requirements contract. The terms of the contract comprise a base 1-year contract with two 1-year options. Schedules I, II, and III, which represent the base year and the two 1-year options, respectively, contain five line items each. The solicitation provided an estimate of the acreage covered under each line item and required a unit and total price for each line item. The aggregate price for schedules I, II, and III constitutes the total price of the bid upon which award was based. In schedule III of the protester's bid, an asterisk was placed next to each line item price. The

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asterisks referred to a note at the bottom of schedule III which read:

"If RUSTY'S SERVICES is awarded this contract the second one year option (schedule III) will be performed in the quantities stated above (or plus 10 percent) at no cost to the government--via an escrow established by a deduction of \$20,611.45 from the final settlement from schedule II."

Rusty's total aggregate bid for schedules I, II, and III was \$349,640, as compared to Geisman's bid of \$476,291, approximately a \$73,000 difference (not including Rusty's offered discount). However, the contracting officer determined that the notation qualified Rusty's bid price, making it ambiguous. We find that the agency's rejection of Rusty's bid was improper.

In order to be responsive, a bid as submitted must represent an unequivocal offer to provide the product or service as specified in the IFB, so that its acceptance will bind the contractor to meet the government's needs in all significant respects. Hirt Telecom Co., B-222746, July 28, 1986, 86-2 C.P.D. ¶ 121. Here, Rusty's submitted unit prices for each of the 15 line items listed in the schedule, as well as a total aggregate price for schedules I, II, and III, as required by the IFB. The prices offered were unequivocally firm and bound Rusty's to the terms of the contract. Rusty's offered discount for schedule III was neither a qualification of the bid nor a deviation from the IFB's requirement of a firm price offer. The Army argues that the phrase, ". . . (or plus 10 percent). . ." of the notation is subject to various interpretations. However, it is important to reiterate that the notation refers solely to a discount and does not affect the firm, fixed-price status of Rusty's offer.

The Army distinguishes the instant case from Sierra Engineering Co., B-185265, May 26, 1976, 76-1 C.P.D. ¶ 342, in which we held that a bid containing an ambiguous price term is acceptable where the bid would be low under any interpretation and where, as a result thereof, no prejudice could inure to other bidders. The Army contends that unlike the Sierra bid, which was responsive under either interpretation, Rusty's price, under one interpretation, is not responsive to the requirement of a firm, fixed price. The Army further contends that Rusty's bid was a contingent discount and did not establish a specific price reduction. We do not agree that the contingency renders the bid non-responsive.

The only reasonable interpretation of the bid as a whole is that Rusty's intended to be bound by its firm offer. The

only effect the "contingency" could have would be to further reduce Rusty's bid price, not increase it. Therefore, the contingency is irrelevant in the evaluation of the bid and Rusty's is the low bidder entitled to the award.

We, therefore, recommend that the contract awarded to Geisman be terminated and that the award be made to Rusty's if the firm is found to be responsible. 4 C.F.R. § 21.6(a) (1987).

The protest is sustained.

for Milton J. Fowler
Comptroller General
of the United States