



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dynateria, Inc.

File: B-229529

Date: March 9, 1988

DIGEST

Where an invitation for bids requires bidders to bid fixed labor rates, overhead rates, and profit percentages to be used in pricing work during contract performance, and requires a total price for cost comparison purposes based on the workload for the prior year without explicitly stating that the total price should include overhead and profit, a protest that a bidder was not required to reflect overhead and profit in its total price is without merit since a proper determination of the expected cost of contracting with the firm cannot be made without evaluating these items.

DECISION

Dynateria, Inc., protests the rejection of the bid it submitted in response to invitation for bids (IFB) No. DTCG23-87-B-60006, issued by the United States Coast Guard for base operating support services at the Coast Guard Support Center, Kodiak, Alaska.^{1/} We deny the protest.

The IFB required firm, fixed prices for various categories of work, such as janitorial services, refuse collection, groundskeeping, and maintenance of vehicles and equipment, during a base year and four 1-year option periods. The bidder was to enter a total price for those work items at line item 0001A. Other work, such as alterations, construction, and repairs, would be performed in accordance with separate job orders issued during contract performance. Payment for the job order work would be based on composite

^{1/} The IFB was issued pursuant to Office of Management and Budget (OMB) Circular No. A-76 to determine whether the support services should be performed by the government or by the private sector.

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wage rates^{2/} supplied by the bidder at line item 0001B2 for various labor categories and on the four separate percentages indicated by the bidder at line item 0001B3 for operational overhead, materials overhead, general and administrative overhead, and profit.^{3/} The contractor also would receive a predetermined amount for materials.

The IFB required bidders to enter at line item 0001B1, "for cost comparison purposes only," a total price for the job order work. The following instructions were provided for line item 0001B1:

"NOTE: For this line item, the Contractor shall multiply the exact number of labor hours at each skill level indicated in Technical Exhibit 4 times the applicable composite labor rates in Section 0001B2; add the cost of materials for Level 3 Work specified in Technical Exhibit 5 (\$370,168); and apply the overall price for this line item. The Government will verify the amount entered in this line item to determine if the total amount bid has been calculated properly."

The "total bid for award evaluation" was to be the sum of line items 0001A and 0001B1, entered at line item 0001C.

Dynateria submitted the apparent low total bid (including options) at \$35,439,921. The second low bid was \$38,713,791, and the estimate for government performance of the work was \$46,779,092. When the Coast Guard was unable to confirm the protester's calculation of its total price for the job order work, the agency requested the firm to verify its bid. Dynateria responded by alleging that the price submitted was the result of a "clerical mistake." According to Dynateria, the totals for the job order work must have been altered inadvertently when a change was made in the format of a computer printout. Other errors were discovered later. The agency did not permit correction, but decided to reject the bid as nonresponsive on the basis that regardless of the alleged errors, Dynateria's price for the job order work, line item 0001B1, did not include application of the overhead burdens or profit percentages Dynateria entered at line item 0001B3.

^{2/} Composite wage rates were to include direct wages, fringe benefits, and payroll taxes.

^{3/} Since the structure of the bidding schedule was the same for the base year and the four option years, references in this decision are to the base year line items only.

Dynateria's position is that the nonresponsiveness determination was improper because nowhere in the solicitation does it state that overhead and profit were to be included in the total job order price. Dynateria contends that it submitted a bid that was consistent with the express language of the solicitation. The protester contends that it is entitled to award based on its low bid of \$36,783,590, an amount that reflects correction of the alleged mistakes, but that does not include amounts for the overhead and profit Dynateria would be paid on the job order work.

The Coast Guard admits that it had intended for the instructions in the IFB to state that bidders were to apply the burden and profit percentages shown at line item 0001B3 in calculating the total price entered at line item 0001B1. The agency points out that the instructions were based on a prior Coast Guard solicitation that in fact expressly required the application of those factors in calculating total job order prices, but that the language inadvertently was omitted here.^{4/} The Coast Guard argues, however, that even though the instructions for line item 0001B1 did not state explicitly that amounts for overhead and profit should be included in the total job order price, the requirement to do so should have been apparent from the solicitation as a whole. The agency notes that the general instructions contained in the IFB provide that, in preparing job order proposals during contract performance, the contractor is to use the overhead rates and profit percentage contained in the bid. The agency also points out that the amount entered by the bidder at line item 0001B1 was intended to reflect the total-evaluated cost to the government for the job order work, and thus necessarily must include all components of the total cost, including overhead and contractor profit. The Coast Guard states that since overhead and profit percentages can be applied differently by different firms,^{5/} it was necessary to have each bidder compute a total price for job order work, thereby revealing in the bid how these factors were to be applied during contract performance. The agency has provided alternative calculations of Dynateria's bid that include amounts for

^{4/} Dynateria states that although it was aware prior to bid opening of the language used in the prior solicitation, it assumed the Coast Guard would have included the language used there if it had desired bidders to apply overhead and profit percentages in calculating their bids.

^{5/} For example, the four percentages could be applied separately, or in sequence.

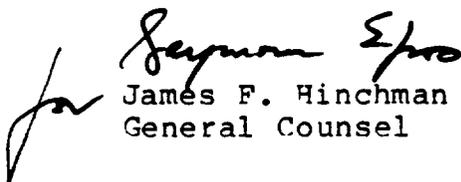
overhead and profit on the job order work; neither calculation shows the protester as low bidder.

We agree with the agency that even though the explicit requirement concerning the inclusion of amounts for overhead and profit in the total job order price was omitted from the IFB, the only reasonable reading of the solicitation as a whole is that the total bid price had to reflect these amounts. The solicitation stated that the total price entered on line item 0001B1 was for cost comparison purposes. Obviously, a valid cost comparison could not be made if such material items as contractor overhead and profit were not included. Further, the solicitation clearly stated that overhead burdens and the profit percentage would be included in each individual job order issued during contract performance. We think it was unreasonable for the protester to have believed that although contractor overhead and profit would be part of the government's total cost during contract performance, the government did not intend to evaluate these items in determining which bid was low.

Dynateria agrees with the Coast Guard that burden rates and profit percentages can be applied in a variety of ways and that the total job order price could vary depending on the method used. In order for the government to determine the low bidder, therefore, each bid had to disclose the method of calculation intended by the bidder. Dynateria's failure to do so resulted in a bid in which the expected cost of contracting with the firm simply could not be evaluated.

In any event, the protester has not shown--nor indeed even alleged--that any calculation of its total bid that includes both overhead and profit on the job order work would result in its being the low bidder. Apparently, Dynateria is low only if job order overhead and profit are not considered. Since a proper evaluation must include these items, we find no basis on the record before us for concluding that Dynateria is entitled to the award.

The protest is denied.


James F. Hinchman
General Counsel