



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Urban Service Systems Corporation
File: B-235124
Date: July 25, 1989

DIGEST

Agency properly rejected protester's bid as nonresponsive where bid guarantee, in the form of an irrevocable letter of credit, is inadequate because it does not identify the solicitation or the work to be performed.

DECISION

Urban Service Systems Corporation protests the rejection of its bid under invitation for bids (IFB) No. GS-11P89MJC0002, issued by the General Services Administration (GSA) for trash and debris removal services. GSA found that the letter of credit submitted by Urban as its bid guarantee was unacceptable and, therefore, rejected its bid as nonresponsive.

We deny the protest.

The IFB required bidders to submit bid guarantees in the amount of 20 percent of the bid price for the initial 12-month period. Bidders were informed that bid guarantees were required to be in the form of a firm commitment, such as an irrevocable letter of credit, and that a bidder's failure to satisfy this requirement at bid opening may be cause for rejecting the bid. See Federal Acquisition Regulation (FAR) § 52.228-1 (FAC 84-27).

Urban submitted with its bid an "Irrevocable Letter of Credit No. 3392," issued by Sovran/DC National Bank of Washington, D.C. The letter of credit stated that: "Except as expressly provided herein, this Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (1983 Revision), International Chamber of Commerce Brochure No. 400." Recovery under the letter of credit was conditioned upon the delivery of the government's draft accompanied by "The original letter of credit and a signed statement from an authorized officer of the [government]"

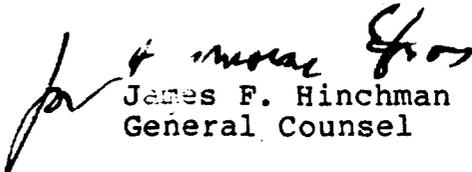
046073/139189

Corporation two (2) separate notices of deficient service and a copy of a notice of full or partial termination." GSA considered the bid guarantee unacceptable because the first statement made the guarantee subject to undisclosed conditions, and the second placed improper conditions upon recovery by the government. Accordingly, GSA rejected Urban's bid as nonresponsive.

A bid guarantee, including a properly drawn irrevocable letter of credit, is a firm commitment to assure the government that a successful bidder will execute contractual documents and provide payment and performance bonds required under the contract. FAR § 28.001 (FAC 84-12). Its purpose is to secure the surety's liability to the government for excess reprocurement costs in the event that the bidder fails to honor its bid. Cos-Mil, Inc., B-235480, June 26, 1989, 89-1 CPD ¶ _____. The sufficiency of a letter of credit as a bid guarantee depends upon whether the government will be able to enforce it if the bidder subsequently fails to execute required contract documents and to provide performance and payment bonds. Where the enforceability of the instrument is uncertain, the letter of credit does not constitute a firm commitment and the bid must be rejected as nonresponsive. Kentucky Bridge and Dam, Inc., B-235806, July 17, 1989, 89-2 CPD ¶ _____.

Here the record shows that Urban did not provide an adequate bid guarantee for a reason more fundamental than that raised by the agency. The letter of credit submitted by Urban did not refer to the IFB by number or indicate that it was for trash and debris removal services. Under these circumstances, GSA could not be sure that the letter of credit was intended to cover this particular solicitation or that it had not also been submitted in connection with other solicitations. See Bailey Enterprises, 66 Comp. Gen. 323 (1987), 87-1 CPD ¶ 265; Daniel R. Hinkle, B-220163, Dec. 9, 1985, 85-2 CPD ¶ 639. Accordingly, since enforcement of the bid guarantee would be uncertain, the letter of credit does not constitute a firm commitment as required by the IFB, and Urban's bid was properly rejected as nonresponsive. Id.

The protest is denied.


James F. Hinchman
General Counsel