

Gilhooly



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Robinson Mills & Williams

File: B-236956.3

Date: February 7, 1990

C. David Robinson, for the protester.
Robert C. Mackichan, Esq., Office of General Counsel,
General Services Administration, for the agency.
Kathleen A. Gilhooly, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Termination of requirements contract for the convenience of the government was not improper where shortly after award agency discovered that solicitation was defective because it failed to provide estimates for any of the specific services to be performed such that the agency could not determine which bid represented the lowest cost to the government.

DECISION

Robinson Mills & Williams protests the action of the General Services Administration (GSA) in terminating, for the convenience of the government, a contract awarded to Robinson under invitation for bids (IFB) No. GS-09P-89-KSC-0141 for space planning services. We deny the protest and claim for costs.

GSA, the owner or lessee of most of the office space used by federal government agencies, issued the IFB for an indefinite quantity contract to provide space planning services to GSA in California, Nevada, Arizona, Hawaii, Guam, and the Pacific Trust territories. The IFB cautioned that the required services were to be supplied on an "as needed" basis and would vary "in level of services as well as size of job."

Offerors were instructed to quote prices, per square foot, for four space planning services (Facility Survey and

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Documentation, Programming, Space Planning, and Master Planning). For other services (Building Evaluation, Move Coordination, Interior Design Program, and Graphic Design) offerors were to quote hourly rates in six specified personnel classifications. The IFB further provided that bids would be evaluated according to a price rating formula under which the sum of the four square foot prices would constitute 90 percent of the evaluation and the average of the six individual hourly rates would constitute the remaining 10 percent.

Five bids were received in response to the IFB. GSA evaluated the bids by multiplying the sum of the per square foot prices by 90 percent, multiplying the average hourly rate by 10 percent, and adding the two resulting figures. Using this formula, Robinson was evaluated as the low bidder, and awarded a contract on September 6, 1989.

By letters dated September 14, two other bidders protested the award of the contract to Robinson, alleging that the bid submitted by Robinson was materially unbalanced, and that Robinson's bid would not result in the lowest overall cost to the government. In this regard, Robinson's \$1.12 square foot sum for space planning services was higher than those of the two protesters (\$.895 and \$1.06) and Robinson's \$9.50 average hourly rate was much lower than those of the protesters (\$51.00 and \$51.33). Under the evaluation formula, Robinson's \$1.958 evaluated price was lower than either of the protesters' evaluated prices (\$5.906 and \$6.087). After considering the protests, the contracting officer concluded that the IFB's method of award was so ambiguous that it was impossible to accurately determine which bid represented the lowest cost to the government, and terminated Robinson's contract for the convenience of the government on September 29 in order to issue a new IFB that did not contain ambiguities.

Robinson protested the termination to our Office on October 10, alleging that it was the low bidder, its bid was not materially unbalanced and its contract should be reinstated.

Although the decision by an agency to terminate a contract, for the convenience of the government, generally is a matter of contract administration not reviewable by our Office, we will consider the reasonableness of such a determination where, as here, the agency determines that the initial award was improper and should be terminated to permit a proper award. Special Waste, Inc., 67 Comp. Gen. 429 (1988), 88-1 CPD ¶ 520.

In the present case, we find reasonable the agency's decision to terminate Robinson's contract because of the evaluation scheme. An IFB must clearly state the basis on which bids will be evaluated for award and, we have recognized that a properly constructed solicitation for an indefinite-quantity requirements contract must state that the evaluation will include estimated quantities as a factor. Temps & Co., 65 Comp. Gen. 640 (1986), 86-1 CPD ¶ 535. The rationale is that any award in a sealed-bid procurement must be made to the responsive, responsible bidder whose submitted price is the lowest based on a real measure of the total work to be awarded. Id. If the IFB's evaluation scheme does not assure that an award to the lowest evaluated bidder will result in the lowest cost to the government in terms of actual performance, the IFB is defective per se and no bid can be evaluated properly. Associated Healthcare Systems, Inc., 65 Comp. Gen. 823 (1986), 86-2 CPD ¶ 246.

Thus we have held that an IFB which indicated that selection for an award would be made on the basis of the sum of the offered unit prices was defective, per se, since there was a failure to apply the estimated amount of services against the item prices in determining the low bid. Allied Container Mfg. Corp., B-201140, Mar. 5, 1981, 81-1 CPD ¶ 175. We also have held defective an IFB where the method of evaluating bids only involved the numerical averaging of hourly rates for each line item, without accounting for the government's best estimates of the quantities of hours required to perform each line item of work to assure award would result in lowest ultimate cost to the government. Temps & Co., 65 Comp. Gen. 640, supra.

GSA acted reasonably here in terminating Robinson's contract since the IFB's evaluation scheme made it impossible to determine which bid would represent the lowest cost to the government. The IFB did not provide for the application of estimated quantities, in either the number of square feet or the anticipated number of hours, to determine the total value of any of the IFB services. Instead, the total square footage prices for one type of services were added to the average hourly rates for other services and a 90/10 weighting formula applied. Since the various types of services and labor would not necessarily be performed with the same frequency or require the same amount of time, the agency, without estimates, could not ascertain which bid represented the lowest overall cost to the government. See Penn et al., 66 Comp. Gen. 242 (1987), 87-1 CPD ¶ 134. Robinson's bid, therefore, should not have been accepted and, accordingly, we conclude that the contract termination was proper.

Robinson claims it is entitled to recover its bid preparation and protest costs. Since we find Robinson's protest to be without merit, there is no basis upon which to find an entitlement to recovery of these costs. 4 C.F.R. § 21.6(d)(1989).

The protest and claim for costs are denied.

for *Seymour Efron*
James F. Hinchman
General Counsel