



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: GSX Government Services, Inc.

File: B-238931

Date: June 19, 1990

Christopher J. Jaekels, Esq., for the protester.
Michael E. Wyant, Department of Justice, for the agency.
Sylvia Schatz, Esq., David Ashen, Esq., and
John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Where invitation for bids (IFB) contemplates award of a firm, fixed-price contract for disposal of hazardous and nonhazardous waste and bid includes extra charge not contemplated by the IFB, which renders the total price of the bid uncertain and conditions the bidder's obligation to perform, the bid is nonresponsive and cannot form the basis for award.

DECISION

GSX Government Services, Inc., protests the award of a contract to Heat Energy Advanced Technology, under invitation for bids (IFB) No. 0-126-002-IFB, issued by UNICOR, Federal Prison Industries, Inc., on behalf of Federal Correctional Institution Bastrop, Bastrop, Texas, for the pickup, transportation, and disposal of hazardous and nonhazardous waste.

We sustain the protest.

The IFB contemplated the award of a firm, fixed-price contract for the transportation and disposal of five types of hazardous waste and three types of nonhazardous waste. It specified that approximately 20 cubic yards of nonhazardous waste would be generated every 90 days and required bidders to submit a price per cubic yard for the transportation and disposal of each type of nonhazardous waste material; the solicitation specified that between approximately 8 and 10 55-gallon barrels of liquid hazardous waste and 25 55-gallon barrels of solid hazardous waste would be

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generated every 90 days and required bidders to submit a price per drum for the transportation and disposal of each type of hazardous waste material. The solicitation further provided that the agency would make more than one award if individual awards would result in the lowest aggregate cost to the government.

Heat and Archon Services, Inc. submitted apparent equal low bids (\$9,000 after extension of unit prices) for disposal of the nonhazardous waste; based upon a drawing, Heat was selected as the low bidder. Heat submitted the apparent low bid (\$977 prior to extension) and GSX the next low bid (\$1,400) for disposal of the hazardous waste. After Heat was determined the low responsive bidder on both the nonhazardous and hazardous portions of the IFB and was awarded the entire contract, GSX filed this protest.

GSX contends that Heat's bid should have been rejected as nonresponsive because, although the IFB requested fixed prices for the transportation and disposal of the wastes, Heat, in addition to submitting line item prices for transportation and disposal of each type of waste, annotated its bid schedule to indicate "1 trip \$750." GSX argues that since the IFB did not specify either the exact number of trips that would be necessary to remove the waste or a definite quantity of waste to be transported per trip, Heat's charge of \$750.00 per trip rendered its total bid price uncertain and its bid ambiguous; as a result, Heat's bid may not represent the lowest actual cost to the government. GSX requests that award of the hazardous waste portion of the contract be made to GSX and award of the nonhazardous waste portion of the contract be made to Archon, as the low, responsive bidders next in line for award for these respective portions of the contract.

In order to be deemed responsive, a bid must unequivocally offer to provide the requested items and meet the material specifications. HBH, Inc., B-225126, Feb. 26, 1987, 87-1 CPD ¶ 222. Thus, a bid must be rejected if it varies from the terms and conditions of the solicitation, limits the firm's contractual obligations, or does not offer to perform at a firm, fixed price where a fixed-price contract is contemplated. Id.

We find that Heat's bid should have been rejected as nonresponsive since its annotation of the bid schedule rendered its bid uncertain as to price. As GSX points out, since the IFB does not provide for a specific number of trips, an additional charge of \$750 per trip cannot be translated into a fixed price; if numerous trips ultimately were required, Heat's total bid would increase significantly. Alternately, the \$750 annotation could be read as a

minimum charge per trip. This could result in no increase to Heat's total price if all trips were for enough cubic yards of waste that the minimum per trip price would be exceeded. However, nothing in the solicitation provided a means for predicting the amount of waste that would be carried per trip. More fundamentally, there is no way to determine from Heat's bid whether the \$750 trip charge was in fact to be a minimum per trip or an additional amount (beyond the cubic yard price) to be added to every trip.

We note that UNICOR did not include the \$750 charge in evaluating Heat's bid. It listed the charge on the bid abstract under a column heading "(quarterly) trip charge" and multiplied the charge by four to arrive at a total of \$3,000, but the agency did not then add this amount to Heat's offered price for hazardous waste. This decision not to increase Heat's bid by this amount was correct, since there was no provision for a quarterly trip charge in the IFB, and the total charge could not otherwise be calculated with certainty. However, UNICOR's decision to make award to Heat on the basis of its offered price, and to disregard the \$750 charge, was incorrect since, as discussed, this charge rendered Heat's bid uncertain as to price; since it is not clear that the bid would be low, it could not form the basis for award.^{1/}

By letter of today to the Attorney General, we are recommending that Heat's contract be terminated for the convenience of the government. As indicated above, the IFB provided that the agency may make more than one award if multiple awards would result in the lowest cost to the government. We recommend that, if otherwise appropriate, award of the hazardous waste portion of the contract be made to GSX and award of the nonhazardous waste portion be made to Archon, since they are the low, responsive bidders next in line for award for these portions of the contract. In addition, we find GSX entitled to recover its costs of

^{1/} UNICOR notes that GSX also qualified its bid. GSX annotated its bid schedule to indicate that its price for transportation and disposal of nonhazardous waste "includes two hours of free demurrage," that is, compensation for a carrier of freight whose vehicle is delayed by failure to unload within the time allowed; GSX indicated that each additional hour of demurrage would be charged at a rate of \$95 per hour. Since, however, GSX is not in line for award for the nonhazardous waste item, and did not so qualify its bid for the hazardous waste item, we need not consider Unicor's claim, and GSX's denial, that the annotation rendered GSX's bid nonresponsive.

filing and pursuing this protest. See 4 C.F.R. § 21.6(d) (1990); Falcon Carriers Inc., 68 Comp. Gen. 20 (1989), 89-1 CPD ¶ 96:

The protest is sustained.

for 
Comptroller General
of the United States