



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Williamson County Ambulance Service, Inc.
File: B-239017
Date: June 22, 1990

John W. Huffman, Esq., Gilbert, Kimmel, Huffman & Prosser, for the protester.
E. L. Harper, Office of Acquisition and Material Management, Department of Veterans Affairs, for the agency.
Catherine M. Evans, and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that award based on total price for base year and option years was inconsistent with solicitation is denied where solicitation clearly informed bidders that total base plus option year periods would be basis for award.
2. Protest that awardee's price is unreasonably low is dismissed as essentially a challenge against contracting officer's affirmative determination of responsibility.
3. Protests of solicitation terms are dismissed as untimely where not filed before bid opening.

DECISION

Williamson County Ambulance Service, Inc., protests the award of a contract to Eldorado Miller Ambulance Service, under invitation for bids (IFB) 609-12-90, issued by the Department of Veterans Affairs (VA) Medical Center in Marion, Illinois for ambulance services. Williamson alleges numerous improprieties with regard to the solicitation, the bid opening, the low bid, and the award.

We deny the protest in part and dismiss it in part.

The bid schedule contained the estimated number of round trips between the Marion Medical Center and two other VA medical centers, and requested prices for "loaded miles" (ambulance trips where a patient is being transported) for

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those trips. Prices were requested for the base year and 4 option years. The solicitation contained the standard "Evaluation of Options" clause (Federal Acquisition Regulation (FAR) § 52.217-7), which provides for evaluation of bids "by adding the total price for all options to the total price for the basic requirement." The clause further provides that evaluation of options will not obligate the government to exercise the options.

Bid opening was conducted on January 17, 1990; Eldorado and Williamson, the only bidders, were present. The bid opening official opened the bids and read the base year prices for each, and announced that Williamson was the apparent low bidder with a base year price of \$213,380. Eldorado's base year price was \$221,380. The bid opening official did not read the prices for the option years, in part because Williamson had listed only unit prices, not total prices, for those years. Following bid opening, the contracting officer evaluated the bids by adding the base year and option year prices, and determined that Eldorado was the overall low bidder at \$1,106,900; Williamson's total bid was \$1,485,125. Eldorado was awarded the contract on January 22.

Williamson contends that the agency improperly made award to Eldorado on the basis of its low total price, instead of to Williamson on the basis of its low base year price. Williamson maintains in this regard that the contracting officer advised it orally that award would be made for the basic 1-year requirement, and that contracts for the remaining 4 years would be issued solely at the option of the government; Williamson contends that this explanation is inconsistent with the solicitation provision stating that bids would be evaluated for award by adding the prices for the base year and all option years.

The evaluation method VA used was proper and consistent with the IFB; the low bidder was determined by adding the prices for the base year and all 4 option years, and award then was made to the low bidder for the base year, as specifically provided for in the solicitation. The oral advice provided Williamson was not inconsistent with the agency's actions or the IFB's evaluation strategy, as award was then made to the overall low bidder for the base year, precisely as the contracting officer explained. Williamson's confusion seems to stem from the agency's award for a single base year after evaluating the base year plus the 4 option years. However, this approach is contemplated by the FAR, which requires that the contracting officer evaluate option prices when it is likely that the government will exercise the options. FAR § 17.206(a).

Noting that Eldorado bid the same prices across all 5 years, Williamson argues that Eldorado's bid should have been rejected as unrealistic because it cannot possibly perform at the same price for 5 years. This argument is without merit. The submission of a below-cost bid is legally unobjectionable; whether a contract can be performed at the offered price is a matter of the bidder's responsibility. Earthworks of Sumter, Inc., B-234594, May 30, 1989, 89-1 CPD ¶ 518. We will not review a contracting officer's affirmative determination of a firm's responsibility absent a showing of possible fraud or bad faith or a failure properly to apply definitive responsibility criteria. 4 C.F.R. § 21.3(m)(5) (1990); ALM, Inc., B-225679.3, May 8, 1987, 87-1 CPD ¶ 493. Neither of those circumstances is present here.

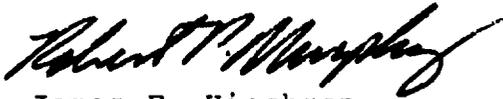
Williamson alleges that Eldorado failed to have its vehicles inspected or to submit proof of insurance and employee licenses prior to award. The only documentation required by the IFB was a schedule of vehicles and proof of insurance; the agency informs us and the record reflects that Eldorado submitted all the required documentation before award. There was no solicitation requirement for a pre-award inspection of vehicles; the only inspection clause in the solicitation reserved to the agency the right to inspect a bidder's facilities or other qualifications. Similarly, there were no requirements for documentation of employee licensing. This argument therefore is without merit.

Williamson also alleges that the bid opening was improperly conducted because the bid opening official read only the bid prices for the base year and declared Williamson the apparent low bidder on that basis. While FAR § 14.402-1(a) provides that bids shall be read where practicable, the agency's failure to do so does not render the procurement defective. See Chamberlain Mfg. Corp., B-239187, Mar. 10, 1983, 83-1 CPD ¶ 243. The purpose of a public bid opening is to afford bidders the opportunity to be present when the bids are opened and to view the bids upon request. Williamson and other attendees were free to invoke this safeguard by requesting an opportunity to view the bids at the bid opening; Williamson did not do so. The relevant consideration is that the agency ultimately properly evaluated the bids for award according to the solicitation, that is, by adding the option year prices to the base year prices.

Williamson further asserts that the solicitation was defective because it did not specifically inform bidders that while they would be reimbursed only for loaded miles,

the Service Contract Act of 1965, as amended, 41 U.S.C. §§ 351 et seq. (1988), requires that they pay workers for unloaded miles as well as for loaded miles. Williamson also alleges that the estimated number of trips was not based on the previous year's trips. These bases of protest are untimely; our Bid Protest Regulations provide that, to be timely, protests of alleged solicitation deficiencies such as these must be filed before bid opening. 4 C.F.R. § 21.2(a)(1). Also untimely is an allegation by Williamson that the contracting officer improperly provided an oral explanation of the solicitation provision concerning evaluation of bids for multiple awards that conflicted with the language of the provision; Williamson was aware of the conflict prior to bid opening but did not protest it at that time. In any event, a bidder relies on such oral explanations at its own risk. See Pluribus Prod., Inc., B-230298.7, Sept. 20, 1989, 89-2 CPD ¶ 248.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel