

McAuliffe



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Alcon Division of Boyles Brothers Drilling Company

File: B-241058

Date: January 16, 1991

Timothy Miguel Willardson, Esq. for the protester.
Millard F. Pippin, Department of the Air Force, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Partial award of certain base line items for construction services is proper where agency reasonably concludes that funds were not available for total quantity.

DECISION

Alcon Division of Boyles Brothers Drilling Company protests the award of a contract by the Department of the Air Force to Gilliland Construction, under invitation for bids (IFB) No. F02604-90-B-0011 for the repair of military family housing unit roofs at Luke Air Force Base, Arizona. Alcon contends that Gilliland's bid should have been rejected as nonresponsive for exceeding the statutory cost limitations applicable to several line items which were not awarded.

We deny the protest.

The IFB, issued on May 7, 1990, contemplated the award of a firm, fixed-price contract. Bidders were required to submit prices for 14 "basic bid items" representing the various family housing unit roofs to be repaired. These line items included both single housing units and duplex housing units. Bidders were also required to submit prices for 17 "additive items" listing additional repairs to be performed if sufficient funds were available. The IFB advised bidders that each single family housing unit was subject to a \$15,000 cost limitation and that each duplex unit was subject to a \$30,000 cost limitation.

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The IFB included Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 252.236-7081 (DAC 88-10), which cautioned bidders that "[b]ids may be rejected which . . . exceed the cost limitations unless such limitations have been waived by the Under Secretary of Defense (Research and Engineering) prior to award." DFARS § 252.236-7082, regarding additive or deductive items, was also included in the solicitation; it stated that the low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened, skipping those additives causing all bidders to exceed the available funds. The IFB also contained the sealed bidding clause applicable to construction which provided that "the government will award a contract to the responsible bidder whose bid conforming to the solicitation will be most advantageous to the government, considering only price . . ." and also provided that the government may accept any item or combination of items, unless precluded by a restrictive limitation in the solicitation or the bid. FAR §§ 52.214-19(a) and (c).

Four bids were submitted by bid opening on June 14. At the time of bid opening, the agency announced and recorded that it had \$745,018 available for this project. Gilliland was the apparent low bidder, having offered a price of \$704,525 for the 14 basic bid items plus \$103,204 for the additive items. Alcon was the apparent second low bidder at \$772,055 for the 14 basic bid items plus \$82,773 for the additive items. Gilliland was the only bidder that offered a price for all of the basic bid items which did not exceed the available funds. Gilliland's bid, however, exceeded the statutory cost limitations applicable to six of the basic bid line items concerning single housing units and two additive line items. By letter of June 26, Gilliland sought a waiver of these statutory cost limitations from the Air Force pursuant to DFARS § 252.236-7081. The Air Force reports that it then reevaluated its needs based on the funding that was available and determined that in light of the substantial cost savings that would result to the government, a partial award would be made to Gilliland as the low aggregate bidder for the basic bid items for duplex repairs. An award for those eight basic bid items was made to Gilliland on August 28 for \$492,378. On September 7, Alcon filed its protest with our Office challenging the award to Gilliland.

Alcon essentially objects to the award to Gilliland because the bid failed to conform to the solicitation's statutory cost limitations for the single family housing unit bid items, and in Alcon's view the Air Force cannot properly make an award for less than the 14 basic bid items listed on the IFB's bid schedule because the IFB advised bidders that award would go to the responsive, responsible low "aggregate" bidder. Alcon, which submitted a bid that was within the cost limitations for single and duplex units, but which exceeded available funding, contends that the agency should reject all bids and resolicit all items.

The Air Force responds that it properly accepted Gilliland's bid on the basis that a bid offering line item prices in excess of statutory cost limitations does not necessitate an outright determination that the bid is nonresponsive at bid opening since circumstances after bid opening (e.g., the grant of a waiver, the correction of a clear mistake in a bid, an increase in the limitation amount or, as here, a partial award) may permit award to the bidder. The Air Force states that in reassessing its needs, it canceled the single housing unit line items subject to the cost limitations exceeded by Gilliland. The Air Force asserts that the anticipated cost savings from the partial award justified its actions and that the IFB provided for a partial award for those individual items whose prices were within applicable statutory limitations.

The protester argues that the agency is precluded by the IFB language requiring an aggregate award of a single contract from making a partial award on less than all base bid items. We disagree.

Generally, where the IFB provides for a base bid and additive and/or deductive items and states that award will be made to the responsible bidder offering the low aggregate amount, an award must be made to the low aggregate bidder. See Northeast Constr. Co., B-205246, Apr. 1, 1982, 82-1 CPD ¶ 239. Accordingly, in the cited case, we sustained a protest because the agency split the base bid requirement between two bidders instead of making one aggregate award to the low bidder. In our judgment, however, the aggregate award language does not preclude an agency from making one award for less than the total base bid when its funds are not sufficient to cover the entire requirement represented by the base bid. See, e.g., Chrysler Corp., B-206943, Sept. 24, 1982, 82-2 CPD ¶ 271; Genco Tool and Eng'g Co., 61 Comp. Gen. 281 (1982), 82-1 CPD ¶ 175.

The record here shows that the agency did not have funds to allow award for all base bid items and could satisfy its immediate needs through a partial award to the low bidder for the items for repair of the duplex units. We find no basis to object to that approach.

The protest is denied.

for Ronald Berger
James F. Hinchman
General Counsel