

J. Cunningham



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Atrium Contracting, Inc.

File: B-241949

Date: March 18, 1991

Willie L. Taylor for the protester.
James K. White, Esq., Department of Commerce, for the agency.
James M. Cunningham, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that all bids should be rejected because price entries in spaces which call for monthly rates per square foot of area to be cleaned indicate that they are not offering the required level of services is denied where the price entries in question are consistent with the solicitation instructions, and the bids do not take any exception to the solicitation requirements.

2. The submission of a below-cost bid is not, in itself, legally objectionable.

DECISION

Atrium Contracting, Inc. protests the Department of Commerce's evaluation of bids under invitation for bids (IFB) No. 51-EANA-0-00061, issued by the National Oceanic and Atmospheric Administration (NOAA) for janitorial services for a 1-year base period with 2 option years at NOAA's Atlantic Marine Center, Norfolk, Virginia. Atrium's contention is that all of the bidders, other than itself, entered prices for monthly rates per square foot which evidence that they do not understand the solicitation requirements and, therefore, do not intend to provide the quantity of cleaning services required under the IFB. In essence, Atrium alleges that all bids other than its own should have been found

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nonresponsive.^{1/} Further, Atrium contends that the awardee's price is unreasonably low.

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

The IFB described daily, weekly, monthly, and quarterly janitorial services in addition to certain "extra tasks" which could be ordered as needed. Routine daily services were described in the IFB, as follows:

UNIT SUPPLIES/SERVICES	QUANTITY	UNIT	PRICE	AMOUNT
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LOT I - BASE YEAR

Routine Daily Services:

Est. 28,306 sq. ft.

at a monthly rate based

on \$_____ per sq. ft.

of area to be cleaned. 12 MO \$_____ \$_____

Seventeen bids were received by the August 31, 1990, bid opening. Atrium's total price for all services and option years was \$195,168.48, which was 14th low of the 17 bids. The 13 lower bids ranged from \$54,618 to \$131,751.08. At bid opening, Atrium insisted that "most bidders had improperly bid the job and could not perform the requirement." Specifically, Atrium asserted to the contracting officer that "other bidders had [erroneously] used the square foot [estimate contained within each item description] as the [total] footage to be cleaned each month," rather than as an estimate which bidders first had to multiply by the number of work days in order to determine the amount of square footage to be cleaned monthly, the amount on which their monthly unit price was to be based. Notwithstanding Atrium's observation, on September 25, the contracting officer informed Atrium that NOAA was planning to proceed with award under the IFB. On October 2, 1990, Atrium filed a protest with NOAA and repeated its earlier assertion that most bids were improperly priced. NOAA denied this protest on October 22, 1990, and Atrium filed its protest with our Office on November 2, 1990. Award has been withheld pending resolution of the protest.

^{1/} As a threshold matter, NOAA argues that Atrium is not an interested party because of its relatively high bid. Since Atrium is, in effect, contending that the IFB pricing formula was misapplied by virtually all bidders other than itself, and apparently is suggesting that the requirement should be recomputed, we consider Atrium to be an interested party under our Regulations. See H.V. Allen Co., Inc., B-225326 et al., Mar. 6, 1987, 87-1 CPD ¶ 260.

The IFB clearly informed bidders of the frequency and scope of the services required and the appropriate basis for calculating both the total monthly price and the "monthly rate" for each of the required services. The IFB furnished specific estimates of the square footage of the area in question for required cleaning services under each item. The IFB also made clear the frequency of the cleaning requirement for each item. For example, with respect to item No. 001, above, the IFB made clear that cleaning services under that item are required on a daily basis for a 28,306 square feet building area. The square footage estimates for all other required items were also plainly stated to be either daily, weekly or monthly estimates. The IFB also specifically directed that work was not to be performed on weekends or on 10 specific holidays "except by special arrangement." Thus, bidders could accurately calculate the length of a typical work-month and the total number of square feet to be cleaned during a work-month.


Atrium's argument essentially is that the other bidders did not make these calculations in arriving at their rate per square foot, but instead erroneously used the IFB item square footage estimates as the total square footage to be cleaned monthly. Atrium's argument is based on the fact that most of the other bidders entered a number in the blank before the "per square foot of area" which they then multiplied by the estimated square footage number provided in the solicitation in order to arrive at the monthly unit price, while Atrium entered a much lower number in this blank, which it then multiplied by the number of days in a month, and multiplied this amount by the square footage estimate to arrive at its monthly unit price. Atrium concludes that the other bidders' entries evidence their intention to clean only a total area per month which is equal to the IFB entry for the square footage estimate.

In our view, Atrium's argument reflects only its misreading of the information provided in the solicitation. As explained above, the IFB instructions for item No. 001 indicate that 28,306 square feet were required to be cleaned each day. The blank in question calls for the entry of a "monthly rate" per square foot, which reasonably indicates that bidders should enter a figure which reflects the rate per square foot for the total number of required cleanings per month, which can be multiplied by the square footage estimate provided in order to arrive at a monthly unit price. This is consistent with a deduction formula provided under section G-4 of the IFB which explains that the daily service rate per square foot in a 22-working-day month is determined by dividing the monthly rate entry in question by 22.

We find nothing in the record which suggests that the other bidders misunderstood the IFB requirements, did not compute their bids in this manner, or otherwise indicated in their bids that they did not intend to comply with the material terms of the solicitation.

Finally, Atrium argues that the apparent low bidder has submitted an allegedly below-cost bid. However, the submission of a below-cost bid is not, in itself, legally objectionable. Atlantic Maintenance, Inc., B-239621.2, June 1, 1990, 90-1 CPD ¶ 523. Consequently, we dismiss this ground of protest.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel