



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Emerald Maintenance, Inc.

File: B-242331

Date: March 22, 1991

John T. Flynn, Esq., Karl Dix, Jr., Esq., and E. Alan Arnold, Esq., Smith, Currie & Hancock, for the protester. Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.

Richard P. Burkard, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of awardee's proposal which allegedly proposed the use of tradesmen who would be paid hourly rates less than those required by the solicitation is denied where record shows that awardee's proposal did not take exception to solicitation requirement that it pay specified wage rates and thus the awardee is obligated under the contract to pay the required rates.

DECISION

Emerald Maintenance, Inc. protests the award of a contract to Global Associates under request for proposals (RFP) No. F64605-90-R-0022, issued by the Air Force for military family housing maintenance at Hickam Air Force Base, Oahu, Hawaii. Emerald alleges principally that the agency's award to Global was improper because Global did not intend to pay certain employees in accordance with wage rates that were contained in the RFP.

We deny the protest.

The RFP, which was issued June 22, 1990, and amended seven times, contemplated the award of a fixed-price requirements contract for one basic contract period beginning November 1, 1990, and ending September 30, 1991, and for four 1-year option periods. The RFP required the contractor to provide maintenance of approximately 2,455 units, including service calls on a 24-hour basis, change of occupancy maintenance, floor refinishing, painting, and complete cleaning of quarters. The RFP contained more than 100 line items describing the tasks to be completed.

The RFP incorporated applicable Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage rate determinations issued by the Department of Labor (DOL), which specified minimum required wage rates to be paid to employees under the contract. The SCA requires that service contracts with the government in excess of \$2,500 contain a provision specifying minimum wages and fringe benefits, as determined by the Secretary of Labor, to be paid to employees in the performance of the contract. 41 U.S.C. § 351(a)(1) (1988). The DBA provides that the advertised specifications for every federal contract in excess of \$2,000 for construction, alteration, and/or repair of public buildings or public works of the United States shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages determined by the Secretary of Labor to be prevailing for corresponding classes of laborers and mechanics employed on similar projects in the locality. 40 U.S.C. § 276a(a) (1988). The Act requires further that every contract based upon these specifications contain a stipulation that the contractor shall pay wages not less than those stated in the specifications. Id.^{1/} The RFP required both service and construction work to be performed; the RFP therefore contained both SCA and DBA provisions. These provisions, which become part of the contract, require, among other things, that the contractor pay its employees in accordance with the wage rate determinations incorporated in the RFP.

Certain line items in the RFP stated that the DBA wage rate determination applied to the work described in those line items. The RFP also indicated that where the line items did not state that the DBA wage rate determination was applicable, contract line items would be payable under SCA wage rate determinations.

Included in the specifications were requirements that the contractor maintain plumbing systems and components and that all plumbing work be accomplished by experienced plumbers under the general supervision of a licensed plumber who holds a journeyman's license from any state in the United States. Similarly, the specifications also required that the contractor maintain and repair the electrical systems on individual family housing units and that all work be accomplished by experienced electricians under the general supervision of a licensed electrician who holds a journeyman's license from any state in the United States. These

^{1/} Obligations under the DBA come into being only by virtue of contractual provisions and are not directly imposed on the employer/contractor by the statute. See 40 Comp. Gen. 565 (1961).

requirements, however, did not correlate with any specific contract line item.

Amendment No. 2 to the RFP, which was issued on August 3, 1990, incorporated the minutes from a preproposal conference that was held on July 13, and was attended by the offerors and Air Force officials. The minutes reflect that the Air Force officials stated that the licensed supervisory electrician and plumber (one each) whose services were required by the RFP must be paid DBA wage rates. Other electricians and plumbers performing under the contract had to be paid in accordance with the SCA wage rate determinations.

The RFP contained evaluation criteria which were listed in descending order of importance as follows: (1) cost/price; (2) comprehension of requirements; (3) management organization and staffing; (4) contract management; and (5) corporate experience in military family housing maintenance. Proposed prices would be evaluated for completeness, realism and reasonableness. The RFP stated that the total price considered would include the basic period of performance and all options and that award would be made to the offeror whose proposal offered the greatest value to the government.

The Air Force received four proposals. The agency determined that each was within the competitive range and requested best and final offers (BAFO) from each firm. All four firms submitted BAFOs. Global submitted the low-priced BAFO, and on November 30, the agency made award to Global. Emerald filed this protest with our Office on December 11. After filing the protest, Emerald brought an action in the United States District Court for the District of Columbia (Civil Action No. 90-3131 RCL) alleging that the Air Force violated various procurement statutes and regulations in its evaluation of proposals. The District Court has stayed all proceedings in that action pending the issuance of a decision by our Office resolving this protest.

Emerald principally alleges that Global's offer proposed the use of various tradesmen who would be paid at hourly rates far lower than those required by the RFP.^{2/} Specifically, it asserts that Global proposed hourly wage rates of \$11.97 and \$13.31 for plumbers and electricians, respectively. The

^{2/} Emerald states in its protest that it has "obtained a copy of the proposed staffing and hourly rates listed by Global Associates in its technical proposal." Neither the Air Force nor Global has released this proprietary information to Emerald. Emerald has failed to offer any explanation to our Office, the Air Force, or Global regarding how it obtained this information.

protester states that the required DBA wage rates are \$29.02 and \$30.05, respectively. Next, based solely on the assertion that Global did not propose to pay wage rates required by the RFP, Emerald contends that the Air Force "could not have" evaluated Global's proposal for "cost realism." Finally, Emerald asserts, again based on Global's alleged failure to propose DBA wage rates, that Global's proposal demonstrated a failure to comprehend the requirements and should therefore have been downgraded by the agency.

We have reviewed Global's technical and cost proposals, and we find that Emerald's protest is based on factually erroneous assumptions. The record shows that the Global wage rates quoted by the protester as evidencing Global's intent to violate the DBA were Global's proposed wage rates for maintenance plumbers and electricians, who were required under the RFP to be paid only at the lower SCA wage rate. Page 1-A-4 of Global's technical proposal indicated that journeymen electricians and plumbers were included among the personnel covered by the DBA. Since the RFP contained the DBA contract clauses and Global's proposal did not take exception to the RFP's requirement that it pay its supervisory plumber and electrician DBA wage rates, Global is clearly obligated under the contract to do so. This is true notwithstanding that Global's cost proposal did not contain a separate entry indicating that the supervisory plumber and electrician would be paid at DBA rates.

The protester relies on two recent decisions of our Office, Unified Indus., Inc., B-237868, Apr. 2, 1990, 90-1 CPD ¶ 346; RGI, Inc.--Recon., B-237868.2, Aug. 13, 1990, 90-2 CPD ¶ 120, to support its argument that the agency waived the requirement that Global pay DBA wage rates and that therefore offerors did not compete on an equal basis. We find that those decisions are not controlling here, since in the procurement at issue in those decisions, the awardee's proposal showed that its costs for certain laborers covered under the applicable SCA determination were less than those required to be paid. In other words, the awardee's proposal specifically took exception to paying certain required wage rates. Thus, the facts in those decisions are clearly distinguishable from the facts in the present case.

Accordingly, the protest is denied.


for James F. Hinchman
General Counsel