



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Moretrench Environmental Services, Inc.

File: B-248326.2

Date: September 10, 1992

Henry N. Christensen, Jr., Esq., Norton & Christensen, for the protester.

Lynne J. Shawyer for Aguilar Associates & Consultants Inc., an interested party.

Lucie J. McDonald, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.

David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid in which the low bidder inserted prices for certain services as additional, separate line items, even though the pricing scheme in the solicitation contemplated inclusion of these items as part of the schedule line item pricing, need not be rejected as nonresponsive because the bid took no exception to the material solicitation requirements, the pricing scheme was unambiguous and the manner of pricing did not prejudice the other bidders.

DECISION

Moretrench Environmental Services, Inc. protests the contract award made to Aguilar Associates & Consultants Inc. under invitation for bids (IFB) No. N62472-91-B-5483, issued by the Naval Air Warfare Station, Lakehurst, New Jersey, to obtain various services related to four separate groundwater extraction, treatment, and injection systems. Moretrench contends that because Aguilar's prices were submitted in a form other than that prescribed in the IFB, Aguilar's bid should have been rejected as nonresponsive.

We deny the protest.

The IFB, issued on February 27, 1992, requested unit and total prices for the required services, which were categorized as either definite or indefinite work for a base period and four 1-year option years. Bidders were to submit firm, fixed-prices for the definite quantity work, which consisted of the operation and maintenance and the

monitoring, sampling, and laboratory analysis required for one of the systems. Firms were also to submit prices for indefinite quantity work, which consisted of estimated needs for the removal and replacement of liquid phase carbon adsorption units, of vapor phase carbon adsorption units and for the removal and disposal of sludge and for the operation and maintenance and the monitoring, sampling and laboratory analysis required for one of the systems not subject to the definite quantity work requirements. The IFB also requested prices based on estimates of additional labor and materials that might be needed to perform the indefinite quantity work. Award was to be based on prices for the base period and all the option years.

Bids were opened on April 6. The total price submitted by Aguilar for the base period and the option years was low; Moretrench's total price was second low. In addition to its prices for the schedule line items, Aguilar included prices for one-time start-up charges for the first month of operation and maintenance and for the initial removal and replacement of the adsorption units. These additional one-time charges were inserted below the schedule line items. Award was made to Aguilar.

Moretrench argues that Aguilar's bid should have been rejected as nonresponsive since by altering the prescribed pricing scheme with its addition of one-time start-up prices, Aguilar was able to bid a lower total price than was Moretrench. The one-time prices (ranging from \$15,200 to \$5,500) applied to twelve line items and totaled \$116,800 or 8 percent of Aguilar's total price. According to Moretrench, Aguilar was able to lower its prices to the prejudice of Moretrench by means of the one-time charges in three ways. First, the "front loading" of these payments permitted Aguilar to finance its work with government payments to a far greater degree than permitted by the IFB. Moretrench and the other bidders by bidding in accordance with the IFB's bidding scheme had to amortize these costs over the life of the contract. Second, these one-time charges allowed it to avoid the risk that the government might order less than the full indefinite quantities envisioned, thus eliminating some of the risks Aguilar and other bidders might face. Third, these one-time charges also potentially reduced the amount of the government's deduction from the contractor's estimates on account of unsatisfactory work should deductions be necessary.

We conclude that Aguilar's bid was responsive. The additional items were required services under the solicitation. The breaking out of these, as separate charges items, did not limit, reduce or modify, Aguilar's obligation to perform all the services required. The Ryan Co., B-238932, June 13, 1990, 90-1 CPD ¶ 557; Pacific Coast Utilities Serv., Inc., B-210285, June 29, 1983, 83-2 CPD ¶ 43. Further, there was no ambiguity as to Aguilar's pricing; it was clear that Aguilar intended these start-up charges to be added to the base period line item prices on the schedule. Thus, there was no question or ambiguity as to how to evaluate Aguilar's bid. The only issue remaining is whether or not Aguilar's pricing method benefitted Aguilar to the competitive prejudice of other bidders. In this connection, award of government contracts pursuant to the rules of sealed bidding must be made on the same terms that they were offered to all bidders in the invitation. Copy Duplicating Prod., Inc., B-245381, Dec. 30, 1991, 92-1 CPD ¶ 15. An irregularity in a bid which results in benefits to a bidder not extended to all other bidders by the invitation and which is prejudicial to those bidders renders the bid nonresponsive. See New World Technology, B-237158, Jan. 19, 1990, 90-1 CPD ¶ 77.

We do not find that Aguilar's pricing scheme prejudiced the competition here. The IFB provided that award would be made to the low bidder for the base period and the four option years. Even adopting Moretrench's computations showing that its price for the base period was \$56,617.28 lower than Aguilar's, Aguilar's total price for the 4-month base period and 4 option years is \$594,710.72 lower than Moretrench's total price. We cannot see how, and Moretrench has made no showing, that Moretrench was competitively prejudiced by Aguilar's additional start-up charges which totalled \$116,800. Even were we to assume that none of the indefinite work quantities would be ordered during the option years, assuming all definite and indefinite work for the base period is ordered (as assumed in Moretrench's computations), Aguilar's price for the base period and option years is lower than Moretrench's prices by \$155,328. Thus, Moretrench's reliance on Copy Duplicating Prod., Inc., B-245381, supra, is misplaced since, unlike here, the prices submitted for a requirements contract left open a possibility that an award to the low bidder might not result in the lowest prices to the government in all circumstances. Here, Aguilar's bid, including the one-time charges, is low under any possible circumstances.

Moretrench also argues Aguilar obtained an advantage by avoiding financing charges on the \$116,000 which Aguilar would be paid during the base period. We cannot find, and Moretrench does not show, how Aguilar could save sufficient money due Aguilar in financing charges over the life of the

contract due to payment of the \$116,800 in one-time charges to overcome the significant difference in bid prices.

Finally, Moretrench argues that Aguilar's pricing method prevents the agency from deducting for unsatisfactory performance. We disagree. We see no reason why deductions for unsatisfactory performance may not be taken on these one-time payments. Arguably, there is a greater amount of money during the base year from which the agency can take deductions. Further, deductions may be taken should unsatisfactory performance occur on subsequent work.

The protest is denied.


for James F. Hinchman
General Counsel