

Cunningham
148002



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: Solid Waste Services, Inc.
File: B-248200.4
Date: November 9, 1992

Hugh O'Neill, Esq., Porter, Wright, Morris & Arthur, for the protester.
Alexander Boskoff, Esq., for Reliable Trash Service, Inc., an interested party.
Paul M. Fisher, Esq., Department of the Navy, for the agency.
James M. Cunningham, Esq., Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Bidder offering hourly rates below those specified in a Service Contract Act (SCA) wage determination is nonetheless eligible for a contract award where its bid does not evidence an intent to violate the SCA and the firm is otherwise determined to be responsible.
2. Protest that low bid should be rejected as unbalanced due to below-cost bid for a portion of the contract requirements is without basis where protester does not identify any portion of the low bid which contained overstated prices.
3. Protest that corrections in bid prices initialed by person other than the person signing the bid was improper is denied where record leaves no doubt that offeror intended to be bound by the initialed prices.

DECISION

Solid Waste Services, Inc. (SWS) protests the pending award of a contract to Reliable Trash Service, Inc., the apparent low bidder under invitation for bids (IFB) No. N624700-92-B-0800, issued by the Department of the Navy for solid waste collection/disposal and related services at the Norfolk Naval Shipyard, Portsmouth, Virginia. SWS contends that Reliable's bid should be rejected because it

allegedly violated the Service Contract Act (SCA), was unbalanced, contained improper corrections of bid entries, and omitted a required certification.

We deny the protest.

The IFB statement of work (SOW) provided a detailed listing of contract requirements and generally provided that the successful offeror would furnish all resources necessary to perform solid waste collection and disposal services at the Norfolk Naval Shipyard. The IFB contemplated award of a base year contract with 4 option years and required offerors to submit bids on three contract line item numbers (CLINs) for each contract period.

Under CLIN 001, bidders were required to submit fixed-price lump-sum bids "to perform all work specified [in the SOW] except that specifically identified as Indefinite Quantity Work"; the work contemplated under CLIN 001 constituted the vast majority of the contract requirements.¹ Under CLIN 002, bidders were required to submit unit prices for estimated quantities of specific tasks to be performed on an indefinite quantity basis.² Under CLIN 003, bidders were required to submit wage rates for estimated quantities of labor in six labor categories.³ Specifically, CLIN 003 contemplated performance, on an indefinite quantity basis, of a limited amount of work "that cannot be identified in sufficient detail [under CLINS 001 and 002]"; consistent with the limited amount of work contemplated, both Reliable's and SWS' bids for CLIN 003 constituted approximately 1 percent of their respective total bids. The IFB also included Federal Acquisition Regulation (FAR) § 52.222-41, requiring that the successful offeror comply with applicable Department of Labor wage determinations made pursuant to the Service Contract Act (SCA).

As amended, the IFB required submission of bids by June 22, 1992, and provided that award would be made on the basis of the low responsive bid. Seven bids, including those of Reliable and SWS, were submitted by the bid opening date.

¹Both SWS' and Reliable's bids for CLIN 001 constituted more than 96 percent of their total evaluated bids.

²For example, CLIN 0002AA required submission of unit price bids to "sandblast and paint 55 gallon drums," and established an estimated quantity of 200 drums.

³CLIN 0003 sought wage rates for an estimated quantity of 220 laborer hours; 280 truck driver hours; 160 equipment operator hours; 100 crane operator hours; 120 rigger hours; and 80 welder hours.

Upon bid opening, Reliable's bid was determined to be low; SWS' bid was third low.⁴ The Navy has not awarded a contract pending resolution of the protest.

SWS first protests that Reliable's bid should be rejected as nonresponsive because, under CLIN 003, Reliable offered wage rates for four of the six labor categories which were lower than the wages established by a Department of Labor wage determination pursuant to the SCA.⁵ The agency responds that it considered Reliable's bid responsive since it took no exception to the requirements of the SCA.

Where a firm offers hourly rates below those specified in an SCA wage determination, that firm is nonetheless eligible for a contract award provided the bid or proposal does not evidence an intent to violate the SCA and the firm is otherwise determined to be responsible. Allen-Norris-Vance Enters., Inc., B-243115, July 5, 1991, 91-2 CPD ¶ 23. A bid which does not take exception to the SCA requirements, but offers labor rates lower than those specified by the SCA, is generally considered to constitute a below-cost bid and is legally unobjectionable. Id.; see also NKF Eng'g, Inc.; Stanley Assocs., B-232143; B-232143.2, Nov. 21, 1988, 88-2 CPD ¶ 497; Uniserv Inc.; Marine Transport Lines, Inc., B-218196; B-218196.3, June 19, 1985, 85-1 CPD ¶ 699.⁶

Here, the bid submitted by Reliable did not take any exception to the IFB requirement regarding compliance with the SCA. Rather, in response to the agency's request, Reliable expressly confirmed the accuracy and validity of its bid and, in response to this protest, Reliable expressly confirmed its intent to comply with the SCA, noting that the

⁴SWS' protest also challenges the acceptability of the second low bid. Since we deny SWS' protest regarding Reliable's bid, we need not address the acceptability of the second low bid.

⁵SWS protests that Reliable bid \$8 for laborers although the applicable SCA wage rate was \$9.42; that Reliable bid \$8 for truck drivers although the applicable SCA wage rates ranged from \$8.23-\$9.08; that Reliable bid \$10 for riggers although the applicable SCA wage rate was \$13.05; and that Reliable bid \$10 for welders although the applicable SCA wage rate was \$13.67.

⁶In contrast, where a bidder has not agreed to be bound by the terms of the SCA, for example, where it fails to acknowledge a solicitation amendment incorporating an SCA wage determination, its bid should be rejected as nonresponsive. See Johnson Moving & Storage Co., B-221826, Mar. 19, 1986, 86-1 CPD ¶ 273.

level of effort contemplated under CLIN 003 represented a minimal portion (less than 1 percent) of its total bid price. SWS' protest offers no evidence, other than the bid itself, that Reliable intends to violate the SCA. On this record, we have no basis to question Reliable's stated intent to comply with the SCA, nor is there any basis to question the agency's determination that Reliable's bid was responsive.

SWS next protests that Reliable's below-cost bid for CLIN 003 rendered its bid unbalanced and, therefore, required its rejection. We disagree.

To be rejected as unbalanced, an offer must be both mathematically and materially unbalanced. To be mathematically unbalanced an offer must contain understated prices for some items and overstated prices for other items. An allegation of understated prices, without any indication of overstated prices, offers no basis for concluding that an offer is mathematically unbalanced. See Atlantic Research Corp., B-247650, June 26, 1992, 92-1 CPD ¶ 543; OMSERV CORP., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271. Here, SWS has not identified any portion of Reliable's bid which contains overstated prices and the record does not otherwise reveal any basis for such an allegation. Accordingly, this portion of SWS' protest is denied. Id.

SWS next protests that, although Reliable's bid was signed by David Naftaly, it contained several corrections that were initialed "IFN."⁷ Referencing FAR § 52.214-12⁸ which states "[e]rasures or other changes must be initialed by the person signing the bid," SWS asserts that Reliable's bid should have been rejected on the basis of the initialed corrections.

A bidder's failure to initial changes is no more than a matter of form, and a contracting officer may waive that requirement as a minor informality where there is no doubt as to the intended bid price. See Hughes & Hughes/KLH Constr., 68 Comp. Gen. 194 (1989), 89-1 CPD ¶ 61; Omni Elevator Co., B-241678, Feb. 25, 1991, 91-1 CPD ¶ 207.

Here, following bid opening, the agency requested and received confirmation from Reliable that the prices it bid were accurate. Further, with its bid, Reliable submitted documentation stating that Irving Naftaly was authorized by

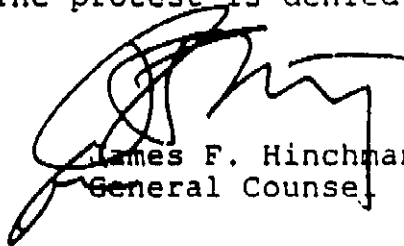
⁷Reliable explains, without contradiction, that the corrections were initialed by Irving F. Naftaly, a vice president of the company.

⁸FAR § 52.214-12 was incorporated into the IFB at L.13.

Reliable to establish the prices offered. On this record, it is clear that the prices submitted in Reliable's bid, as initialed by Irving Naftaly, accurately represented Reliable's intended bid and bound Reliable to perform at that price. Accordingly, this portion of SWS' protest is denied.

Finally, SWS protests that the agency should have rejected Reliable's bid on the basis that it did not affirmatively respond to the IFB's incorporation of the lobbying restrictions of the Byrd Amendment, Public Law No. 101-121, 31 U.S.C. § 1352.⁹ Following the agency's response to this issue in its agency report, SWS comments did not address the matter; accordingly, we conclude that SWS has abandoned the issue. In any event, the FAR section on which SWS relies expressly states that "[t]he offeror, by signing its offer, hereby certifies [compliance with all provisions of the clause]." FAR § 52.201-11(b); see also Tennier Indus., Inc., 69 Comp. Gen. 588 (1990), 90-2 CPD ¶ 25. Thus, by signing its bid, Reliable submitted the certification which SWS asserts was omitted.

The protest is denied.



James F. Hinchman
General Counsel

⁹Section K-4 of the IFB incorporated FAR § 52.203-11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions."