



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Galveston Aviation Weather Partnership

File: B-252014.2

Date: May 5, 1993

James R. O'Donnell, Jr., for the protester.
Alfred A. Wohlgemuth for Weather Experts Inc., an interested party.
Lisa J. Obayashi, Esq., Department of Commerce, for the agency.
Paula A. Williams, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bidder whose price allegedly does not cover hourly rates under Service Contract Act (SCA) wage determination is eligible for contract award where its bid is responsive and does not evidence an intent to violate the SCA, and the firm was determined to be responsible.

DECISION

The Galveston Aviation Weather Partnership protests the proposed award of a contract to Weather Experts, Inc. under invitation for bids (IFB) No. 51RANW300008, issued by the Department of Commerce on behalf of the National Weather Service for weather observations at the Scholes Field Airport in Galveston, Texas. The protester essentially contends that Weather Experts' bid should be rejected because it is unreasonably low and that Weather Experts is not a responsible bidder.

We dismiss the protest.

The IFB, issued as a total small business set-aside, contemplated the award of a firm, fixed-price contract for a base year with two 1-year options. The contract is subject to a Department of Labor wage determination issued pursuant to the Service Contract Act of 1965, as amended (SCA), 41 U.S.C. §§ 351-358 (1988).

Of the 11 bids received by the December 9, 1992, bid opening, Weather Experts' total bid of \$245,088 was low while the protester's bid was second low at \$266,652. Based on the notice that Weather Experts was the apparent low, responsive bidder, Galveston protested to the agency and our Office. No award has been made, however, during the pendency of these protests, the contracting officer determined that Weather Experts is a responsible contractor.

Galveston maintains that Weather Experts' bid is so unrealistically low that it cannot support payment of the wage rates for the labor categories required by the IFB and established by the applicable SCA wage determination. In response, the agency points out that Weather Experts's bid is responsive because it took no exception to the applicable SCA wage determinations under the IFB.

Even if a firm offers hourly rates below those specified in an SCA wage determination, that firm is nonetheless eligible for contract award provided its bid does not evidence an intent to violate the SCA and the firm is otherwise determined to be responsible. Solid Waste Servs., Inc., B-248200.4, Nov. 9, 1992, 92-2 CPD ¶ 327. Weather Experts did not take exception to the IFB requirement regarding compliance with the SCA, hence, Weather Experts is obligated to pay its employees at the SCA wage determination rate.¹ 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.

The protester's remaining argument is that the agency's affirmative determination of Weather Experts' responsibility was improper. The protester claims that it conducted its own on-site investigation of the facilities where Weather Experts has weather observation contracts and alleges that it furnished the contracting officer with information after it filed this protest concerning Weather Experts's prior contract performance.² Given this information, Galveston

¹To the extent Galveston alleges that Weather Experts improperly classifies its employees in order to circumvent the requirements of the SCA, the administration and enforcement of the SCA rests with DOL and is not encompassed by our bid protest function. Starlite Servs., Inc., B-210762, Mar. 7, 1983, 83-1 CPD ¶ 229.

²Galveston alleges that there have been substantial problems on prior contracts awarded to Weather Experts due to an inadequate and inexperienced workforce that resulted in poor performance, damage to government equipment and facilities, and a serious accident due to contractor error.

maintains that the contracting officer should have considered or investigated this information and then found Weather Experts nonresponsible.

Our Office will not review an affirmative determination of responsibility absent, as pertains here, evidence of possible fraud or bad faith on the part of contracting officials, 4 C.F.R. § 21.3(m)(5) (1993); All Rite Rubbish Removal, Inc., B-241288, Jan. 31, 1991, 91-1 CPD ¶ 99. We find no such evidence here. Commerce specifically determined that Weather Experts' prior performance on weather observations contracts was satisfactory. The agency also reports that upon receipt of the information furnished by Galveston, the National Weather Service, which monitors contractor performance, made an unannounced visit to the facility where Weather Experts has a weather observations contract and found no contract performance violations. The fact that the agency found Weather Experts responsible despite Galveston's alleged investigative findings does not constitute evidence of fraud or bad faith. Id. Similarly, the fact that the contracting officer did not conduct an independent investigation is not evidence of bad faith. Under these circumstances, we will not review the agency's affirmative determination of responsibility. JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198.

The protest is dismissed.



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