



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: FBF Industries, Inc.

File: B-252574

Date: June 21, 1993

Keith E. Sanford for the protester.
Hugh J. Hurwitz, Esq., Federal Bureau of Prisons, for the agency.
Richard P. Burkard, Esq., and Roger H. Ayer, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency should have evaluated bids on an item basis and made a partial award to the protester based upon its low bid for one of six line items is denied where the solicitation provided that bids would be evaluated on an all-or-none basis "for all items" and did not contain the multiple awards clause which would permit the agency to make award on an item basis.

DECISION

FBF Industries, Inc. protests the award of a contract to NuFabriTech, Inc. under invitation for bids (IFB) No. 1PI-0196-93, issued by UNICOR, Federal Prison Industries, Inc., for the supply of eyelets and grommets for use in the manufacture of U.S. Postal Service mail bags. FBF contends that the IFB allows multiple awards and that the agency should have awarded it one of the line items instead of awarding the entire contract to NuFabriTech.¹

We deny the protest.

The IFB, issued October 20, 1992, contemplated the award of a firm-fixed price, requirements contract. The IFB listed six line items and provided estimated quantities for each.

¹FBF also alleged that the IFB contained incorrect delivery locations. Protests based upon alleged improprieties in the solicitation that are apparent prior to bid opening must be filed prior to bid opening. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1993). This allegation is untimely since it was not raised prior to bid opening, and it will not be considered.

Preceding this listing was a general statement that "BIDS WILL BE EVALUATED ON AN ALL OR NONE BASIS." The IFB provided under section M, "EVALUATION FACTORS FOR AWARD," that "bids shall be evaluated . . . on an ALL OR NONE basis for all items to the responsible bidders whose bid is responsive to the items of the [IFB]. . . ." (Emphasis supplied.)

Nine bids were opened on December 1. NuFabriTech submitted the low bid of \$552,914.40 and was awarded the contract on February 10, 1993. FBF protested the award contending that it should have received a partial award since its bid of \$83,166.80 for line item 6 was lower than the awardee's bid of \$95,310. The protester reads the IFB's "all or none" language as specific to certain line items and merely advice to bidders that the agency would not make a split award of the specified line items. The protester argues that the IFB's use of the term "bidders" in section M is indicative of an intent to consider multiple awards under the IFB.

The IFB here incorporated the award clause set forth at Federal Acquisition Regulation (FAR) § 52.214-10, which provides, in part, that the agency "may accept any item or group of items of a bid. . . ." FAR § 52.214-10(c). The language of this standard clause allows award to be made on an item basis when the IFB does not specifically require an aggregate award. Talbott Dev. Corp., B-220641, Feb. 11, 1986, 86-1 CPD ¶ 152. When an aggregate award is required by the IFB, however, the agency must award on that basis. Wyoming Weavers, Inc., B-229669.3, June 2, 1988, 88-1 CPD ¶ 519.

Here, the IFB required an aggregate award. The IFB explicitly stated that bids would be evaluated on an all or none basis for all items. While the protester would have us read the IFB as stating that "bids shall be evaluated on an all-or-none basis for each item," such an interpretation is simply not warranted by the language used. Moreover, the IFB did not contain the multiple awards clause that is necessary for awarding to more than one bidder. See N.F.E., Inc., B-241460, Dec. 21, 1990, 90-2 CPD ¶ 520. We therefore conclude that the IFB unambiguously provided for an aggregate award. See Wyoming Weavers, Inc., supra.²

²The IFB's use of the notation "bid all or none" under certain line items is not inconsistent with our conclusion. This language, in our view, merely sought to avoid the possibility that bidders would submit bids for partial quantities under a particular line item. We note, in this regard, that none of the bidders submitted a bid for a partial quantity under any line item.

Concerning the protester's reliance on the term "bidders" in the section M phrase, "bids shall be evaluated . . . on an ALL OR NONE basis for all items to the responsible bidders whose bid is responsive to the items of the (IFB) . . .," the use of the plural as opposed to the singular "bidder" is an obvious typographical error since it is followed by language clearly indicative of an aggregate award (i.e., "whose bid is responsive to the items"). For the reasons stated above, it clear that taken as a whole the tenor of the IFB was that the agency intended to make one award for all items, notwithstanding the typographical error. See ATD-American Co., B-235080, July 12, 1989, 89-2 CPD ¶ 43.

The protest is denied.


for James F. Hinchman
General Counsel