



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Weather Experts, Inc.

File: B-255103

Date: February 9, 1994

Robert Riekkola for the protester,
Jeffrey A. Short, for Weather Data Services, Inc., an interested party.
John R. McCaw, Esq., Department of Transportation, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency is required to make multiple awards, rather than an aggregate award, under an invitation for bids (IFB) for weather observation services which contains four separate items, each covering a separate weather observation location, where the IFB permitted bids on single locations and did not require an aggregate award, and where multiple awards will result in a lower price than an aggregate award.

DECISION

Weather Experts, Inc. protests the rejection of its bid under invitation for bids (IFB) No. DTFA14-93-B-33472, issued by the Department of Transportation, Federal Aviation Administration (FAA), for weather observation services at four sites in North Dakota. Weather Experts protests that its bid should not have been rejected as nonresponsive for bidding on only one of the four observation locations and that multiple awards should have been made under the IFB.

We sustain the protest.

FAA issued the IFB on August 16, 1993, soliciting bids on the services to be provided as follows:

"Furnish aviation weather observation services at the four (4) locations specified below in the State of North Dakota in accordance with terms and conditions of the Statement of Work and the contract clauses included elsewhere in this solicitation. . . ."

The bid schedule then listed each location separately and requested bid prices for performing the service at each respective location for the base year and four option years of the contract. There was no blank on the bid schedule for the total bid price of the 4 locations. The four locations were Grand Forks, Dickinson, Jamestown and Minot.

The IFB stated that bids would be evaluated on the basis of price and price related factors only, and that award would be made on the basis of lowest price to the government. The IFB incorporated by reference the contract award clause for sealed bidding found at Federal Acquisition Regulation (FAR) § 52.214-10, which states in pertinent part:

"(c) The [g]overnment may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The [g]overnment reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered unless the bidder specifies otherwise in the bid."
(Emphasis in original.)

Bid opening was on September 15. Weather Experts submitted a bid on the Grand Forks location only for a total price of \$565,908, which was the lowest priced bid on that location. FAA rejected Weather Expert's bid as nonresponsive because it did not bid on all four locations.

Weather Data Services, Inc. submitted the lowest responsive, aggregate bid for all four locations at a price of \$2,006,664 and FAA proposes to make award to that firm.¹ Weather Data's bid was not qualified as being "all or none" and its bid price for Grand Forks was \$590,592. The combination of multiple awards resulting in the lowest price

¹Metro Monitoring Services, Inc. submitted a lower aggregate bid price than Weather Data. After bid opening, Metro Monitoring demonstrated a mistake in its bid to the satisfaction of FAA and FAA permitted the firm to withdraw its bid.

to the government totals \$1,979,592,² which is \$27,072 less than the aggregate bid of Weather Data.

Weather Experts protested the rejection of its bid on September 28. Since this protest was filed prior to award, award was withheld in accordance with the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(c)(1) (1988).

Weather Experts alleges that the IFB permitted bids on single locations and did not indicate that a single award in the aggregate was contemplated. Weather Experts contends that the agency is therefore required to make multiple awards under the IFB because such awards would result in a lower price than an aggregate award. We agree.

Where the award clause in an IFB permits the government to accept any item or group of items in a bid, and the solicitation does not otherwise specifically require an aggregate award, multiple awards may be made. HFS, Inc., B-246018, Feb. 7, 1992, 92-1 CPD ¶ 160; Talbott Development Corp., B-220641, Feb 11, 1986, 86-1 CPD ¶ 152 ; Goodman Ball, Inc., B-217318, Mar. 25, 1985, 85-1 CPD ¶ 348. Where the solicitation permits multiple awards, a bid that offers performance on less than all the items solicited is responsive. HFS, Inc., supra. Multiple awards are required under an IFB where multiple awards are permitted by the solicitation and would result in the lowest overall cost to the government. HFS, Inc., supra; Mark A. Carroll and Sons, Inc., B-194419, Nov. 5, 1979, 79-2 CPD ¶ 319.

Here, the award clause at FAR § 52.214-10 permitted multiple awards, stating that the agency could "accept any item or group of items of a bid," and the IFB did not otherwise specifically prohibit multiple awards. Thus, the IFB did not prohibit partial bids and FAA improperly rejected as nonresponsive Weather Experts' bid for the Grand Forks location only. See HFS, Inc., supra. Since multiple awards

²The lowest multiple award price is calculated as follows:

<u>Location</u>	<u>Bidder</u>	<u>Price</u>
Grand Forks	Weather Experts	\$ 565,908
Dickinson	Weather Data	590,592
Jamestown	Weather Data	590,592
Minot	Midwest Weather, Inc.	232,500
Total		\$1,979,592

will result in a lower cost to the government, an aggregate award under would be improper. Id.; Mark A. Carroll and Sons, Inc., supra.

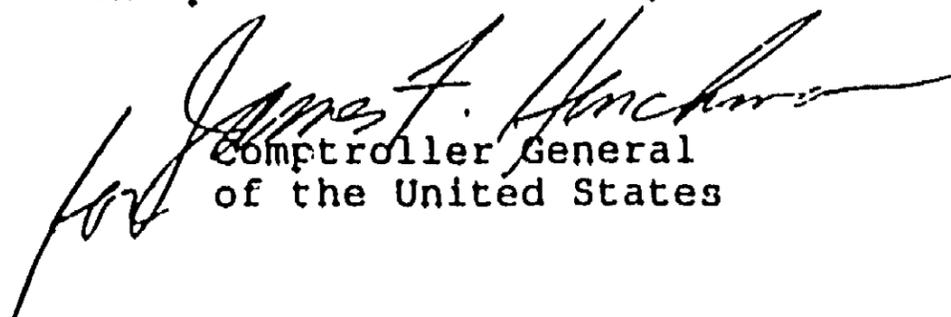
FAA alleges that the IFB contemplated and required an aggregate award because the language of the bid schedule required bidders to submit bids on all four locations, and the solicitation did not incorporate a clause for evaluating multiple awards. The language cited by FAA is the IFB request for bidders to "[f]urnish aviation weather observation services at the four (4) locations specified" in the bid schedule. This request contains no specific requirement for "all or none" bids or for an aggregate award, nor does it contain a prohibition on partial bids. Considering the specific language in the award clause, which we have consistently interpreted to permit multiple awards, and considering the absence of a specific preclusion on multiple awards or partial bids in the IFB, FAA's interpretation of the language in the bid schedule is unreasonable. Talbott Development Corp., supra.

Moreover, the weather observation services for the individual sites are clearly severable and there is nothing in the record that suggests that they cannot be performed by separate contractors. Contrary to FAA's argument, there is nothing in the tenor of the IFB which evidences that only an aggregate award was contemplated. Id.; compare Durodyne, Inc., B-212922, Dec. 20, 1983, 84-1 CPD ¶ 5 (where the tenor of the IFB, including the nature of line items, established that an aggregate award was contemplated, even though the IFB did not expressly require "all or none" bids). To the contrary, the bid schedule contain four distinct items representing each location and there was no space on the bid schedule for a total bid price. The only reasons advanced by FAA for desiring an aggregate award relate to a presumption that an aggregate award will result in a lower cost to the government; this is contradicted here, as multiple awards result in the lowest cost to the government.

As noted by FAA, the IFB did not contain the provision for evaluating bids for multiple awards at FAR § 52.214-22, which provides for including in the price evaluation the administrative cost associated with issuing multiple contracts of \$500 per contract and which is required to be included in solicitations where multiple awards might be made. FAR § 14.201-6(q). However, absent a specific requirement for an aggregate award, the failure to include in the solicitation a clause for evaluating multiple awards does not preclude multiple awards. Goodman Ball, Inc., supra. The additional administrative cost associated with multiple awards is not material here due to the great difference in price between multiple awards and the proposed aggregate award.

We recommend that FAA make multiple awards to the low responsive and responsible bidders on each of the four locations. Weather Experts is also entitled to its reasonable costs of pursuing this protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1). The protester should file its claim for costs directly with the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.


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