



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

Decision

Matter of: American Medical Waste Systems, Inc.
File: B-260195
Date: May 24, 1995

Raymond T. Pirraglia, Esq., for the protester, William E. Thomas, Jr., Esq., Dennis Foley, Esq., and Philip Kauffman, Esq., Department of Veterans Affairs, for the agency. Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Bid which took exception to material solicitation requirement regarding size of waste container to be provided for waste disposal was properly rejected as nonresponsive.

DECISION

American Medical Waste Systems, Inc. (AMWSI) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 630-30-95 issued by the Department of Veterans Affairs (VA) for the removal and decontamination of regulated medical waste at the VA Medical Center, New York.

We deny the protest.

The IFB, in the statement of work (SOW), required bidders to provide reusable containers for the collection, storage, and transportation of medical waste. The SOW stated that the agency required approximately 7.0 cubic foot containers, newly lined and leak tight.

The IFB bid schedule read essentially as follows:

INITIAL TERM: January 1, 1995 [through] September 30, 1995. Bidder shall enter in the space provided below a fixed price for each container to include the services specified.

Item No.

1. Cost/price per 7.0 cubic foot reusable container \$ _____ per container

OPTION ONE: October 1, 1995 [through] September 30, 1996. Bidder shall enter in the space provided below a fixed price for each container to include the services specified.

Item No.

2. Cost/price per 7.0 cubic foot reusable container \$ _____ per container

Estimated quantity: 30,000 lbs per month.

As provided by the IFB, the agency used the price per the specified container to determine the low bidder.

Two bids were received by the December 21 bid opening date. The agency rejected the AMWSI bid as nonresponsive because the firm did not offer to supply the required 7 cubic foot containers. Instead, AMWSI crossed out the "7.0" cubic foot specification on the bid schedule and entered the following for both the initial and option periods: \$6.25 per 5 cubic foot container, \$10.00 per 8 cubic foot container, and \$1.25 per cubic foot.

AMWSI protested to VA, arguing that the 7.0 cubic foot size was only "approximate" and that the IFB did not specifically require that size container. AMWSI stated that its 8.0 cubic foot container should have been acceptable because it approximates the 7 cubic foot size. The protester alleged that there was no reason that 7 cubic foot containers should be used to service this contract rather than the standard 8 cubic foot size unless the agency was trying "to steer the contract to a company with access to such containers on a preferred basis." AMWSI also argued that although it entered prices for both 5 cubic foot and 8 cubic foot containers, it also offered a \$1.25 per cubic foot price.

The agency denied AMWSI's protest, stating that AMWSI had altered the bid schedule so that the bid failed to conform to VA's minimum requirements. In its protest to our Office, AMWSI again argues that the agency improperly rejected its bid as nonresponsive and that its price of \$1.25 per cubic foot should be considered the low bid.

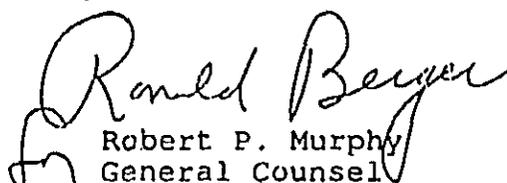
A responsive bid is one that offers to perform, without exception, the exact thing called for in the solicitation and, upon acceptance, will bind the contractor to perform in accordance with all the invitation's material terms and conditions; a bid that takes exception to a material requirement of the solicitation must be rejected as nonresponsive. Thompson Power, B-244894, July 31, 1991, 91-2 CPD ¶ 118; Pepsi-Cola Bottling Co. of Salina, Inc.--Recon., B-203680.2, Mar. 4, 1982, 82-1 CPD ¶ 193.

Here, AMWSI materially altered the IFB schedule by crossing out the 7.0 cubic foot container requirement and substituting a 5.0 cubic foot container and a 8.0 cubic foot container. By doing so, AMWSI expressly took exception to the IFB requirement and instead declined to obligate itself to supply the 7.0 cubic foot container in accordance with the specifications.

The protester's argument that the IFB did not require 7.0 cubic foot containers is without merit. While a container size requirement of "approximately 7.0 cubic foot" was indicated in the SOW, when read in conjunction with the explicit statement on the bid schedule, that each bidder was to supply a price per 7.0 cubic foot container, it was clear that the IFB required the 7.0 cubic foot container. AMWSI's bid took exception to this requirement, offering two different size containers; hence, its bid was nonresponsive.¹

The protester's argument that it submitted the low bid price, based on its bid of \$1.25 per cubic foot, is also without merit. It was clear from the structure and language of the bid schedule, which provided a single space for a price per container, that a single price per container was called for. This was reinforced by the schedule's direction that the bidder "shall enter . . . a fixed price for each container. . . ." AMWSI's price per cubic foot merely reflected its average price for the offered 5 and 8 cubic foot containers. The entries make clear that these, rather than the required 7 cubic foot container which AMWSI specifically crossed out, constitute AMWSI's offer, and this exception renders its bid nonresponsive.

The protest is denied.


Robert P. Murphy
General Counsel

¹To the extent that AMWSI is asserting that the IFB was ambiguous regarding the container size requirement or that VA does not require the 7.0 cubic foot size containers, these allegations are untimely since they are based on alleged improprieties in the solicitation which were apparent prior to bid opening and therefore must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1995); Manatts, Inc., B-237532, Feb. 16, 1990, 90-1 CPD ¶ 287.