



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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Suite 440
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Attention: John B. Tieder, Jr., Esq.

Gentlemen:

Further reference is made to your protest on behalf of Nationwide Building Maintenance, Inc. (Nationwide), under Invitations for Bids (IFBs) Nos. DAHC-30-72-B-0107 and -0138, issued by the Military District of Washington, Cameron Station, Alexandria, Virginia. Originally you had protested against any award to other than your firm under four IFBs issued by the same command, but two of the protests were withdrawn inasmuch as your client received the awards under those solicitations.

The subject invitations solicited bids for supplying custodial services at the Tri-Service Barracks, Fort Meyer, Virginia, and 16 buildings at Fort McNair, respectively, for the period of July 1, 1972, through June 30, 1973. Award has been made under IFB 0107 to Kentucky Building Maintenance, Inc. (Kentucky), and to Kleen-Rite Janitorial Services, Inc., under IFB 0138, notwithstanding the protest. In this regard, you question whether the Department of the Army has followed the requirements of sections 2-407.8(b)(2) & (3) of the Armed Services Procurement Regulation (ASPR) in making the referenced awards. While it is regrettable that you did not learn of the award under IFB 0107 until August 25, 1972, our Office was informally advised of the Army's intention to make the award on July 27, 1972, which notification was followed by our receipt on August 1, 1972, of copies of the written determination to make the award on the ground of urgency. Similar reasons were given for the award on October 20, 1972, under IFB 0138, which action you have protested directly to the Army. We therefore have no basis to question the awarding of the contracts prior to the resolution of your protest, as it appears that the referenced regulations were followed.

PUBLISHED DECISION
52 Comp. Gen. _____

Essentially, your protest is on the basis that bids submitted without a satisfactory outline of a proposed "method of operation" were nonresponsive, and such a defect therefore could not be corrected after bid opening. You also contend that failure to reject such bids changed the evaluation criteria set out in the invitations.

In this connection, both invitations provided, in pertinent part, substantially as follows:

"EACH BIDDER SHALL submit with his bid an outline of his proposed method of operation. The outline shall be subject to review and approval by the Contracting Officer and shall include, but not be restricted to, the following:

- (a) Organization of job and work force;
- (b) Method of supervision, including number of supervisors and their qualifications;
- (c) Types and quantities of equipment; and
- (d) Schedules of performance of non-daily tasks including dates work is to be performed.

"Outlines will be returned to the unsuccessful bidders after award of the contract. Failure to submit such outline shall result in rejection of bid as non-responsive. Failure to submit a method of operations meeting with the approval of the Contracting Officer shall result in rejection of bid.

* * * * *

"SECTION D EVALUATION FACTORS FOR AWARD

1. Award will be made to one responsive, responsible low bidder.

2. Bidders failing to submit the Method of Operations as required in Section C will be rejected as non-responsive. The Government reserves the right to reject bidders on the basis of their Method of Operations."

It is your position that:

"The information solicited by the instant 'method of operation' relates to what specifically the contractor is offering in response to the IFB. It would indicate whether he understood what was required of him, and whether he intended to supply that which was required. Thus the 'method of operation' requirement would appear to be a response to the specific problem of bidders not offering what the IFB was soliciting and any bid which does not contain it should be rejected as non-responsive."

You therefore contend that since neither Kentucky's bid, under IFB -0107, nor Kleen-Rite Janitorial Service's, Inc. (Kleen-Rite), bid under IFB -0133, included a completely satisfactory plan of operation, their bids under each referenced solicitation should have been rejected as nonresponsive, and you cite several of our decisions as support for this contention.

We have reviewed most carefully your citations and arguments in support of your position, but we are of the view that the information called for under the above-quoted provisions of the invitations concerns the responsibility of the bidders. Such information as organization of job and work force, method of supervision, type and quantities of equipment and schedule of performance of nondaily tasks, generally relates to a bidder's ability to perform in accordance with the contract terms, and not to his obligation to perform the janitorial services in exact conformity with the extensively detailed specifications included in the invitation. In the instant case the requirement for a bidder to submit with his bid an outline of his proposed method, or plan, of operation clearly pertains to a demonstration of the bidder's "know how" to perform the required services, and the matter of "know how" has been held to be an element of responsibility. 38 Comp. Gen. 864 (1959); 45 id. 4 (1965).

While the requirement for the above information was stated in mandatory terms, it does not appear that this information was intended to operate to define or limit the bidder's obligations under the contract to be awarded. Neither may a matter of responsibility be treated as one of responsiveness merely because of a statement to that effect in the solicitation. B-150373, March 7, 1963. We view these IFBs as solicitations for contracts for the performance of definitely described and enumerated janitorial services, and not for the furnishing of equipment, employees, or organization as such, other than as those factors may be incidental to the proper performance of the required services. 37 Comp. Gen. 143 (1957); 42 id. 728 (1963); 43 id. 77 (1963); 51 id. 329 (1971); B-165689, January 29, 1969; B-165094, October 18, 1968 (a case in which your client had initially failed to furnish similar information); and B-168396, February 2, 1970. Thus, the failure of the low bidders to submit acceptable outlines with their bids is not fatal to consideration of their bids, inasmuch as the bidders' ability or responsibility may be determined on the basis of information submitted after the opening of bids. 39 Comp. Gen. 247 (1959); id. 881 (1960); 41 id. 555 (1962). We have also held that the failure of a bidder to submit information with his bid, even when specified by the invitation, as in this case, does not render his bid nonresponsive. 42 Comp. Gen. 464 (1963).

While we have recognized in certain cases involving a product that technical data, necessary for determining whether the specifications would be satisfied by the item offered, may be required with a bid for the purposes of bid evaluation, 40 Comp. Gen. 132 (1960), under the terms of the subject invitations bidders were required to bid on performing the work as set forth in the specifications, and the outlines were not necessary for the purpose of determining whether the services offered were the same as those specified. Since the specifications form the only basis for the actual work requirements of the contracts awarded, or to be awarded, bidders' outlines of their methods of operation could properly be used in the awarding of the contracts only to evaluate the bidders' "know how" to perform such requirements, an element of responsibility, and not to determine whether they were offering to perform the required work.

Furthermore, we are of the view that permitting the bidders to submit, after bid opening, supplemental or modified outlines of their

methods of operation, even though the outlines vary from the original data submitted, is not synonymous with allowing a bidder to change his bid after bid opening. Since the bidders agreed to comply with the specifications in all respects, the bidders legally could not have refused to accept award of the contract on the ground that their bids were defective because they did not contain complete or adequate information. Cf. 37 Comp. Gen. 143, 146 (1957). In this regard, there is no evidence that any bidder was afforded an opportunity to copy another bidder's outline of his method of operation or was otherwise afforded an unfair competitive advantage.

In view of the foregoing, we are troubled that the invitations provided that the method of operation would be considered in evaluating the bids, since the work requirements which the successful bidder would be contractually bound to perform were set forth in the specifications, and an evaluation of responsiveness could properly be made only on the basis of what was advertised for inclusion in the contract. There was no indication that a bidder's outline of his proposed method of operation would be included as a provision to be adhered to in any resultant contract. We are therefore suggesting to the Secretary of the Army that in future solicitations, when it is deemed desirable to require an outline of the bidders' proposed method of operation, there be included in the invitation a definite statement as to the purpose of such requirement and, particularly, how the outlines will be considered both in the selection of the successful bidder and in the administration of the contract.

Finally, we cannot construe the holding in the case of Albano Cleaners, Inc. v. United States, Ct. Cl. No. 188-67 (February 18, 1972), as requiring the conclusion that the procuring activity's alleged established treatment of the outline of a bidder's proposed method of operation, i.e., as a matter of responsiveness, must be adhered to and is not now subject to change. In that case the court recognized that even where certain qualifications in bids had received a particular treatment by an agency in prior procurements, that agency was not estopped from ceasing such treatment of bids in the awarding of new contracts. Therefore, even if the procuring activity had previously considered the submission of an acceptable outline with the bid to be a matter of responsiveness, we do not regard the cited case as supporting your contention that the procuring activity could not now properly

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consider the outline requirement as a matter of responsibility in the awarding of the subject IFBs.

For the foregoing reasons, we conclude that no legal basis exists for objecting to the award of the contract to Kentucky, the lowest responsive, responsible bidder under IFB -0107 or to the proposed award to Kleen-Rite under -0138.

Accordingly, your protest on behalf of Nationwide is denied.

Very truly yours,

R.F.KELLER

Deputy Comptroller General
of the United States