

DECISION



J. W. Savely, Jr.
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

7881

FILE: B-191636

DATE: October 3, 1978

MATTER OF: A. J. Fowler

DIGEST:

1. When protester alleges that its failure to receive IFB and subsequent amendments prevents it from having adequate bid preparation time and yet is able to submit both bid and amended bid prior to bid opening, issue is considered academic.
2. Prebid conference is not routine procedure to be held repeatedly and at bidder's request; it is uncommon procedure to instruct bidders on complex procurements as soon as possible after issuance of invitation.
3. In requirements contract, Government must base its quantity estimates on best available information. This standard requires inclusion of sources of information and types of factors normally relevant to similar quantity projections. Estimates which meet this criteria, even if not absolutely correct, will not be challenged by GAO.
4. Decision to include or exclude particular work items in solicitation when that decision reflects needs of contracting agency will not be questioned by GAO unless decision is unreasonable or made in bad faith.
5. Protester's allegation of improper conduct during the bid opening is not supported when contracting agency refutes that allegation with statements of others present at opening.

A. J. Fowler (Fowler) protests the award of a requirements contract for grass-cutting services under invitation for bids (IFB) DAEA18-78-B-0039, issued by the U.S. Army, Fort Huachuca, Arizona.

The IFB was issued on March 22, 1978. It stated that a prebid conference was scheduled for March 31 and that bids would be opened on April 12. On April 5, Fowler, the incumbent contractor, protested the making of an award under the IFB on three grounds. Fowler alleged that (1) the IFB provided insufficient time for the successful bidder to acquire and locate his equipment in order to commence performance on May 1; (2) the IFB acreage estimates were less than the actual acreage of the areas required to be mowed, and (3) the IFB required performance of specialized cemetery grounds and rock-removal services which should not have been included in a grass-cutting contract. On April 17, Fowler also protested the manner in which the bid opening was conducted.

Lack of Time to Marshal Equipment

In addition to its complaint that the IFB provided insufficient time within which to marshal equipment, Fowler states that it did not receive the IFB until April 30, that it had not received the two amendments to the IFB as of April 17 (the amended bid opening date), and that it was refused a second prebid conference.

The Army states that an IFB was mailed to Fowler on March 22, the same day the IFB's were mailed to all others on the Bidder's Mailing List; both amendments also were mailed to Fowler. The Army also states that Fowler was present at the Procurement Division, Fort Huachuca, on April 3, 4 and 5, and that both amendments to the IFB were posted on the Bid Board. In addition, it is reported that Fowler submitted two bids on April 17, 1978, one dated April 4 and the other dated April 12, with both amendments signed and attached.

Despite its alleged failure to receive this material, Fowler submitted both a bid and an amended bid by April 17. Because Fowler was able to submit two bids, the question of adequate bid preparation

time is rendered academic and will not be considered further by GAO. Cf. Hugo Neu Steel Products, Inc., B-184888, February 24, 1976, 76-1 CPD 127.

The Army held a prebid conference as scheduled on March 31, which was attended by four firms, representing businesses located in California, New Mexico, and Georgia. (Fowler, located in Louisiana, did not attend.) During the conference, a tour of the grounds to be maintained was conducted. Further, the IFB urged bidders to inspect the worksite.

The Armed Services Procurement Regulation (ASPR) indicates that a prebid conference is an uncommon procedure which is used to instruct bidders on complex procurements; the regulations recommend that such a conference be held as soon as possible after the invitation has been issued. ASPR § 2-207 (1976 ed.). Nowhere is it suggested that a prebid conference is a routine procedure to be undertaken repeatedly or at a bidder's request. Therefore, the Army's refusal to grant a second prebid conference was reasonable. Additionally, as the incumbent contractor, Fowler had enough time to familiarize itself with the area.

Fowler also contended that the awardee of this contract would have inadequate time to marshal equipment for timely commencement of work.

Of the four bidders, only Fowler raised this issue. Adam II, Ltd., the low bidder on this procurement, indicated that it would be able to acquire the necessary equipment for performance within 4 days of notification of award. Interestingly, under the prior grass cutting contract, Fowler started work 2 weeks after award; at that time he did not need 30 to 60 days to start work as contended now. Even if it is assumed that it would be difficult to quickly obtain and locate equipment, "the needs of the Government are paramount and the Government is not required to compromise its own needs in order to accommodate prospective bidders." Union Carbide Corp., B-188426, September 20, 1977, 77-2 CPD 204. Based on the above, and since

the prior contract expired on April 30, we see no basis for concluding that the IFB provided an unreasonable startup time.

Misrepresentation of Acreage

Fowler contends that because the estimated acreage to be mowed under this solicitation was less than that mowed under the prior contract, the Government reduced the estimates in order to induce underbidding.

In rebuttal, the Army states that prior to issuance of the IFB, engineers measured the areas to be maintained, using three different techniques. In these circumstances, the issue becomes not whether the acreage figures stated in the IFB equal those stated in the previous contract, but whether the current figures were compiled from the best available information.

Generally, when the Government solicits bids on the basis of estimated quantities to be performed in a given period (here cycles to be mowed), those quantities must be compiled from the best available information. Central Brace Company, B-179788, January 29, 1974, 74-1 CPD 38. If the procedure used to obtain the data necessary to make quantity projections includes the sources of information and the types of factors normally relevant, then the estimates are considered to be based on the best available information. Trataros Painting and Construction Corp., B-186655, January 18, 1977, 77-1 CPD 37. Here, the Army measured the areas to be mowed with a wheeled measuring device, a planimeter, and verified its figures on a scaled map. It is our view that this procedure comports with the standard stated above; thus, even if the estimates are not absolutely correct, they are based on the best available information and will not be challenged by GAO. Union Carbide Corp., supra.

Inclusion of Different Types of Work
in One Contract

Fowler contends that the IFB improperly requires performance of specialized cemetery grounds and rock-removal services in addition to performance of general grass-cutting services; Fowler states the cemetery grounds and rock-removal services should be solicited in a separate procurement.

The Army considers it reasonable and logical to include these related services in a contract for grounds maintenance. It notes that only the digging of graves is unrelated to typical grounds maintenance work and that grave digging does not require specialized skills. Additionally, the Army regards its rock-removal requirement as a convenient way to pay contractors for work which a prudent contractor would undertake anyway.

Determining minimum needs and drafting specifications which properly reflect those needs are functions of the contracting agency. In carrying out these functions, responsible agency officials are accorded a reasonable range of judgment and discretion. Such determinations can encompass decisions whether to procure several work items under one solicitation, or whether to "break out" certain work items in separate solicitations. Southern Methodist University, B-187737, April 27, 1977, 77-1 CPD 289. This Office accepts the judgment of the contracting agency in making these determinations unless that judgment is shown to be unreasonable or rendered in bad faith. Watkins-Johnson Company, B-186762, October 19, 1976, 76-2 CPD 346. The Army's decision to require grass-cutting, cemetery grounds, and rock-removal services in one contract has not been shown to be either unreasonable or in bad faith; therefore, the Army's decision will not be questioned by us.

In addition, Fowler states that the inclusion of certain line items, which permit the Government

to unilaterally increase or decrease by 10 percent per cycle the acreages to be irrigated or mowed and the number of trees and shrubs to be irrigated, could result in the successful bidder servicing distant areas or hauling more rocks farther than anticipated at bid preparation time.

The Army replies that these items were included to aid bidders in submitting realistic bids. The items identify potential additional labor costs based upon the Army's experience with similar contracts. They also reflect the effect seasonal changes have upon the Army's requirements. We believe the Army has stated a reasonable basis for inclusion of a variation of quantities provision in the solicitation.


Improper Bid Opening

Finally, Fowler protests the manner in which the bid opening was conducted; he alleges that the bid opening officer was insolent, that he refused to give basic information about the bids, that the extensions of the unit prices were not read, and that the officer did not permit the bids to be seen.

The statements of others present at the opening indicate that the bid opening officer was courteous to Fowler's representatives and that all their questions were answered. Additionally, the Army explains that the extensions of the unit prices were not read because under ASPR § 2-406.2 a mistake made in the extension of prices is treated as an apparent clerical mistake. Because the unit prices are presumed to be correct, the Army only reads the unit prices when evaluating bids. Finally, the Army states that Fowler's representatives did not ask to examine the bids. If such a request had been made, the Army, of course, would have been required to make the bids available for public inspection. ASPR § 2-402.1(a) and (c) (1976 ed.).

When a protester's allegations with respect to a disputed question of fact are refuted by other evidence of record, the protester has failed to carry its burden of affirmatively proving its allegation electro-Mek, Inc., B-185892, July 26, 1976, 76-2 81. Accordingly, from the evidence of record, Office has no basis for concluding that the bid opening was not conducted properly.

The protest is denied.


Deputy Comptroller General
of the United States