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P.L.I.
D. Hastingher

DECISION



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

FILE: B-191765

DATE: July 6, 1978

MATTER OF: Environmental Land Surveys

DIGEST:

Low base bid price is "not to exceed \$25,000"; bidder intends to charge Government at specific hourly rates and for incidental expenses; and word "NONE" is inserted in place provided for lump-sum price on additive item of work. Only reasonable interpretation is that maximum liability to Government is \$25,000 and that bidder intended that additive work would be done at "no charge" and not that either additive work would not be done or price for additive work was included in \$25,000 figure. Bid may be considered unambiguous and responsive.

Environmental Land Surveys (ELS) protests the proposed rejection of its bid by the Forest Service under invitation for bids No. R2-78-51. The contracting officer determined the bid to be nonresponsive as he considered it ambiguous as to the prices offered and as to how much of the required work the bidder intended to do.

The invitation originally invited bids for work involving geologic landform and hazard mapping with a place (\$____) for the insertion of a lump-sum price. ELS inserted the words "not to exceed" prior to this and in the place a price of \$25,000. By an amendment to the invitation, work requiring the successful contractor to "describe in the text, and note on the map * * *, potential sources and probable types of road construction aggregate material occurring within the landform units mapped" was added. This "additive item" of work was to be included in the resultant contract only if sufficient funds were determined to exist after the Forest Service knew the bid prices received. A place (\$____) was provided for the insertion of a lump-sum price. ELS filled in the place with the word "NONE."

In addition to the above, in the place provided on the invitation cover sheet for the insertion of a prompt payment discount, ELS wrote: "PLEASE SEE OFFEROR'S STATEMENT, ATTACHED." ELS provided in the statement, in pertinent portion, that:

"We offer no discount for prompt payment * * * Instead we propose to charge you only for actual hours worked on the study, at hourly rates of \$10 and \$6, and for subcontracted analyses of soil and rock composition, and other incidental expenses, but in no event will the total charge exceed the bid figure."

In view of the above, the contracting officer determined that the bid was ambiguous as it could be interpreted reasonably in any of the three following ways:

- 1-The bid is one for cost reimbursement for the base item only, with a ceiling price of \$25,000. ELS will not do the additive item of work.
- 2-The bid is one for cost reimbursement and covers both the base item and the additive item, with a ceiling price of \$25,000.
- 3-The bid is one for cost reimbursement for the base item, with a ceiling price of \$25,000. The additive item will be accomplished by the bidder at no charge to the Government.

Interpretation No. 1 was considered to render the bid nonresponsive since the bidder would not be obligated to perform the additive item of work. Interpretation No. 2 was considered to render the bid responsive. Interpretation No. 3 was considered to render the bid nonresponsive since the work is allegedly such that some of the base item work and the additive item work must of necessity be performed simultaneously, and, consequently, "it is virtually impossible to separate the time and effort spent on one or the other * * *."

Thus the bidder would be unable to keep its hours spent on each item of work separate, and the Government would be unable to ascertain exactly how many hours of work it could properly be charged with and could legally pay for. Finally, the contracting officer notes that, since the ELS bid price is 22 percent below the next low bid and 31 percent below the Government estimate, ELS may have made a mistake in computing its price or may be nonresponsible because it does not understand the work requirements.

In response to the findings of the contracting officer, ELS replies that it wrote "NONE" in the place intended for the insertion of a bid price because it did not intend to charge the Government for that work. The word "NONE" was inserted instead of "0.00" "in accordance with accepted accounting practice, to avoid the possibility of one or more digits being spuriously entered to the left of the zeroes." Further, ELS believes interpretation No. 3 to be the only logical one and argues that the time spent on the base item and the additive item can be separated. Finally, ELS considers its bid price to be realistic and claims that no mistake occurred.

As to the final point, our Office will now consider those matters since the contracting officer has not made the appropriate determinations in accordance with the procurement regulations.

An ambiguity exists only if two or more reasonable interpretations are possible. Dittmore-Freimuth Corp. v. United States, 182 Ct. Cl. 507, 390 F.2d 664 (1968). We believe that the ELS bid may be considered unambiguous and responsive because the only reasonable interpretation is that asserted by ELS. The bidder signed and returned the amendment containing the additive item of work, thereby acknowledging that he knew the Government wanted a bid to be submitted on this work. In the place where the bidder was to insert a lump-sum price, the bidder indicated that none would be charged. The fact that the place where "NONE" was inserted was preceded by a dollar sign and was for the insertion of the amount of the bid price leads to the reasonable conclusion that the bidder did not intend to charge the Government for this item of the work. 40 Comp. Gen. 321 (1960); 48 Comp. Gen. 757 (1969); and B-172716, June 14, 1971.

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In view of our conclusion on the effect of the insertion of the word "NONE," we do not find that the contracting officer's interpretation Nos. 1 and 2 are reasonable. As regards what we consider to be the only reasonable interpretation (No. 3), the fact that the Government may be unable to ascertain with specificity how much time the bidder will spend doing the base item of work as opposed to the "no charge" additive (which ELS disputes) is of no significance. The pertinent fact is that the maximum liability of the Government is \$25,000, the lowest eligible price by \$7,000. We see no impediment to an award to ELS under these circumstances. See B-162355, March 8, 1968. Cf. Applied Management Sciences, Inc., B-182770, July 1, 1975, 75-2 CPD 2.

Accordingly, the ELS bid may be considered for award if otherwise proper.

R. F. Kellum
Deputy Comptroller General
of the United States