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DECISION



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

10,294

FILE: B-194214

DATE: May 25, 1979

MATTER OF: Webfoot Reforestation

DIGEST:

1. Where solicitation advises bidders that Government will award contracts by item, bid which does not limit bidder's obligation to perform contract or limit the right of the Government to award contract for only item for which bidder was eligible for award is responsive, notwithstanding unauthorized bid qualifications limiting award to two items.
2. Where there has been some deviation from the manner of bidding specified in solicitation determinative issue of whether bid should be rejected is whether or not deviation worked to the prejudice of other bidders.

Webfoot Reforestation (Webfoot) protests a decision by the United States Department of Agriculture Forest Service contracting officer rejecting its bid on solicitation No. R6-3-79-20 as nonresponsive.

The solicitation called for bids on 23 areas (items) of tree planting in five ranger districts of Gifford Pinchot National Forest. Acreage to be planted varied by area from 81 acres (item 23, in Mt. Adams Ranger District) to 1,210 acres (item 13, in Randle Ranger District). The IFB indicated that award would be made by item. DLG01654

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In addition, the IFB contained the following pertinent provision:

"Bidders who bid on more than one item may qualify their bids to limit the total quantity of work for which they will be obligated to accept a contract. A bidder desiring to qualify his bid must complete the following:

[Protest Involving Contract AWARDED by ITEM]

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"My bid is limited to a total of _____
acres and _____ dollars * * *."

* * * * *

"Bids qualified other than as provided
above will be considered non-responsive."

By letter of February 26, 1979, the contracting officer notified Webfoot that its bid was determined to be nonresponsive because Webfoot, in addition to limiting its bid to 1,250 acres and \$137,000, added the phrase "limit of 2 items". Webfoot explains that it has only two crews and that in view of the great range of acreage among the items and the variety of planting methods required by the IFB, it could not compete for any of the work if it were barred from limiting its bid to two items.

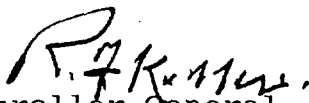
Webfoot was apparent low bidder only on item 19, requiring planting of 804 acres in Mt. Adams Ranger District. Its bid was \$92,445 for this item as opposed to the bid of \$96,072 by Far West Reforesters, Inc. (Far West). Award for item 19 was made to Far West.

The concept of the responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the requested items in total conformance with the terms and specifications of the invitation. A bid which takes no exception to the requirements of the invitation is responsive, i.e., it complies with all material requirements of the invitation. Thus where the bidder has promised to deliver exactly what was called for in the invitation, within the time periods specified, and in accordance with the terms and conditions of the invitation, the bid is responsive. J. Baranello and Sons, B-192221, May 9, 1979, 58 Comp. Gen. _____, 79-1 CPD _____. Where there has been some deviation from the manner of bidding specified, we have held that the determinative issue of whether the bid should be rejected is whether or not the deviation worked to the prejudice of other bidders. Herman H. Neumann Construction, 55 Comp. Gen. 168 (1975), 75-2 CPD 123.

In this case we are of opinion that under any test, the Webfoot bid should not have been rejected. For example, we believe the Webfoot bid was responsive with respect to Item 19, the only item for which Webfoot was eligible for award, since we fail to see how the bid qualification in any way affected the Government's right to award a contract to Webfoot for item 19 in a manner that would be inconsistent with the terms of the invitation. Moreover, that qualification did not limit or modify the bidder's obligation to perform the contract for that item in any respect. In any event there clearly was no prejudice to other bidders as the invitation announced award would be made by item. In this circumstance, we believe that award should have been made to Webfoot for item 19, assuming that firm was found to be a responsible prospective contractor.

However, although we conclude that Webfoot may have been entitled to an award, we are unable to recommend any effective corrective action in this instance. In this respect, we have been informally advised that Far West has moved its employees and equipment into the work area and commenced contract performance on May 4, 1979. Further, the contract requires completion of the work within 30 calendar days, so that we do not believe there is any meaningful relief which we can provide in this case. Nonetheless, by separate letter we are recommending to the Secretary of Agriculture that appropriate action be taken on the basis of this decision with respect to future procurements. We are also requesting the Secretary to consider permitting bidders who choose to bid on more than one item to qualify their bids to limit awards to items as well as acreage and monetary value, since we believe the present limitation has the effect of restricting competition to firms with unlimited resources or those who are willing to bid on only one item.

Accordingly, the protest is sustained.


Deputy Comptroller General
of the United States