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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** JWK International Corporation

**File:** B-272529

**Date:** October 21, 1996

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Keith L. Baker, Esq., and Timi E. Nickerson, Esq., Eckert, Seamans, Cherin & Mellott, for the protester.

Christopher M. Bellomy, Esq., Department of the Navy, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest by sixth low bidder that five lower bids are nonresponsive on ground that supplemental pricing information required to be submitted with bids indicates that bidders do not intend to furnish minimum staffing set out in invitation for bids (IFB) is denied where a reasonable reading of the IFB shows that at least one of the lower-priced bidder's proposed staffing is consistent with the staffing set out in IFB.

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## DECISION

JWK International Corporation protests the award of a contract under invitation for bids (IFB) No. N62467-95-B-1126, issued by the Department of the Navy, Naval Facilities Engineering Command, for base operations services at the agency's facility in McGregor, Texas. The protester asserts that the five lower bids submitted in response to the IFB are nonresponsive because each bid contains evidence, on its face, that the bidder does not intend to comply with the IFB's statement of work.

We deny the protest.

The IFB, issued as a small business set-aside, called for award of a combination firm, fixed-price and indefinite quantity contract for operations and maintenance at the facility, for a 6-month base period with four 1-year options and a fifth, 6-month, option period. Contract line item numbers (CLIN) 0001, 0011, 0021, 0031, 0041, and 0051 represented the fixed-price portion of the work for the base and option

periods, which is at issue here.<sup>1</sup> The solicitation provided for award to the low responsive, responsible bidder on CLINs 0001-0060.

The last page of section B, the bid schedule, instructed bidders to provide certain supplemental pricing information "in order to facilitate the [g]overnment's evaluation of the Firm Fixed-Price portion." Bidders had to break down their prices for CLIN 0011 (the fixed-price portion of the first full year of performance) into 14 elements. One of these elements was startup costs; the other elements corresponded to 13 "annexes" set out in section C of the IFB which describe the different kinds of work required under the IFB. For each of the annexes, as well as startup costs, bidders were to provide estimates of labor years devoted to that portion of the work (expressed as "full-time equivalents" (FTE)), with the associated labor, material, and equipment costs. The IFB advised bidders that the "grand total" for the 13 annexes and startup costs had to equal the amount bid for CLIN 0011.

Three of the annexes listed in section C of the IFB are relevant to the protest: annex 6 (fire protection services); annex 7 (water supply system operation and maintenance); and annex 11 (operation and maintenance of the electrical distribution system).

The agency received 11 bids; the protester's bid was sixth low. JWK contends that the five lower-priced bids are nonresponsive, specifically asserting that the supplemental pricing information provided by the five bidders indicates that they do not intend to furnish the minimum staffing levels set out in annexes 6, 7, and 11 of the IFB.

A bid must be responsive to be considered for award, which means that the bid must be an offer to perform, without exception, the exact thing called for in the solicitation and, upon acceptance, will bind the contractor to perform in accordance with the material terms and conditions of the IFB. Stay, Inc., B-237073, Dec. 22, 1989, 89-2 CPD ¶ 586. Responsiveness is determined at the time of bid opening from the face of the bid documents. B-G Mechanical Serv., Inc., B-265782, Dec. 27, 1995, 96-1 CPD ¶ 6.

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<sup>1</sup>CLINs 0002-0008, 0022-0028, 0032-0028, 0042-0048, and 0052-0058 contained the agency's estimates for the indefinite quantity work. CLINs 0009, 0019, 0029, 0039, 0049, and 0059 and CLINs 0010, 0020, 0030, 0040, 0050, and 0060 were for material and equipment to support the fixed-price work in the base and option periods.

Here, the agency disagrees with JWK's assertion that the staffing levels set out in the bidders' supplemental pricing information bear on the responsiveness of the bids. Rather, the agency contends, it requested the supplemental pricing information solely for the purpose of evaluating price reasonableness and not for the purpose of judging conformance to the statement of work. We need not resolve this issue since, even assuming that the IFB set out minimum staffing requirements as JWK contends, at least one of the low bidders proposed staffing sufficient to perform in accordance with those requirements.

With respect to annex 6, JWK argues that the required minimum staffing is 21 FTEs; the record shows that the fourth low bidder, LB&B Associates Inc., proposed 23 FTEs for annex 6. Thus, even under JWK's interpretation of the annex 6 staffing levels, LB&B's bid is acceptable.

With respect to annex 11, paragraph C11.6e required the contractor to provide a duty electrician (to be available within 30 minutes of an emergency call) and paragraph C11.6f called for a chief of the watch (to be available on base 24 hours a day, 7 days a week). JWK contends that this staffing translates into a minimum of 5.2 FTEs; LB&B's bid listed 1 FTE for annex 11.

We do not agree with the protester's calculations. First, paragraph C6.4b(5) of the statement of work for annex 6 (fire protection services) specifically states that the dispatcher assigned to annex 6 will serve as chief of the watch "for other annexes such as security, water, sewer, or electrical services." Thus, the chief of the watch position in annex 11 is the same as the dispatcher position in annex 6; there is no separate FTE required for this position under annex 11. Nor is there an FTE requirement for a duty electrician in annex 11, since the duty electrician is required to be "on call" rather than physically present for any specified period.<sup>2</sup>

With regard to annex 7 (water supply system operation and maintenance), paragraph C7.6e set out the following staffing: a maintenance supervisor (to be available for the "first shift," Monday to Friday); and a laboratory technician (to be available "as required"). An attachment to annex 7 (Technical Exhibit 7-2) refers to another position, an operator, with no required availability specified. JWK interprets the IFB to require 12.6 FTEs for annex 7 (three positions at 4.2 FTEs each); LB&B's bid indicated that 1 FTE would be furnished.

While JWK argues that, based on Technical Exhibit 7-2, annex 7 should be interpreted as establishing minimum staffing of three positions (a maintenance

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<sup>2</sup>In any event, the staffing listed by the low bidder--1 FTE--is consistent with JWK's staffing estimate for the duty electrician.

supervisor; an operator; and a laboratory technician), the protester ignores the specific minimum staffing requirements set forth in paragraph C7.6e of the annex. That paragraph, entitled Staffing, expressly states that the minimum staffing is a maintenance supervisor for the first shift, Monday through Friday, with a laboratory technician as needed; there is no mention, and no specified availability, for the third position (“operator”) listed in the technical exhibit. Thus, we think the statement of work, at most, establishes the minimum staffing as one FTE, the number listed in LB&B's bid.

In sum, since LB&B's lower-priced bid offered the minimum staffing JWK asserts was required for annex 6, as well as adequate staffing under a reasonable interpretation of the requirements for annexes 7 and 11, we see no basis to conclude that the bid is nonresponsive even assuming, as JWK argues, that the IFB specified minimum required staffing levels. In view of this conclusion, we will not consider JWK's challenge to the responsiveness of the other bids since JWK would not be in line for award even if its challenge to those bids were sustained. See Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1996); ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

The protest is denied.

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