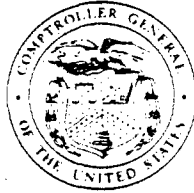


DECISION



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

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FILE: B-183245

DATE: August 14, 1975

MATTER OF: Able Building Maintenance & Service Co., Inc.

DIGEST:

1. Where invitation provided that in order to meet minimum performance standards, contractor had to furnish minimum number of workers or equivalent man hours, 8 hours per day, 40 hours per week (minimum number of personnel to be provided was determined by dividing square footage of area to be serviced by minimum square footage which solicitation required each worker to cover per day which was 20,000 to 30,000 square feet), bid predicated on workers covering 30,000 to 45,000 square feet per day properly rejected since bid failed to conform to invitation's minimum manning requirements.
2. Bid price of \$9,165.37 per month by successful bidder for custodial services did not indicate that \$4,000 per month profit would be realized as contended by protester since contracting officer computed reasonable minimum labor costs to be \$8,991 per month, by multiplying minimum manning requirements by minimum hourly wage rate. GAO finds no basis to object to this method of computation.
3. Protest that use of manning charts in determining adequacy of bid is fallacious and that criteria or standards for determining responsiveness of bids were nonexistent at time of bid submission is untimely, since 4 C.F.R. § 20.2(a), then in effect, required protests against solicitation defects to be filed prior to bid opening.

By letter of February 12, 1975, with enclosures, Able Building Maintenance & Service Co., Inc. (Able), protested against rejection of its bid and award of a contract for item 6 to another firm under solicitation No. F33601-74-B-0284, issued by the Base Procurement Branch, Wright-Patterson Air Force Base, Ohio. Able also protested certain questionable procedures allegedly employed by the procuring activity in the award of the contract.

The solicitation, issued on June 14, 1974, was for janitorial-custodial services at Wright-Patterson AFB for the period July 1, 1974, through June 30, 1975. Bids were opened, as scheduled, on July 9, 1974, and it was determined that Able had submitted the low bid for Alternate Bid #1, which included items 2, 3 and 6. Able's bid prices for these items were \$40,227.38, \$37,017.86 and \$5,744.14, respectively. However, the record indicates that Able's bid prices were based on furnishing less than the minimum number of workers required by the invitation for Alternate Bid #1. The solicitation, at page 140, provided that in order to meet the minimum standards of performance required, the contractor had to furnish a minimum number of workers or equivalent man hours, 8 hours per day, 40 hours per week. The minimum number of personnel to be provided was determined by dividing the square footage of the area to be serviced by the minimum square footage which the solicitation required each worker to cover per day, 20,000 to 30,000 square feet on the present procurement.

Able questions the procuring activity's use of manning charts to determine the adequacy of bids. Able states that its experience dictates that a bid based on using anywhere from 30,000 to 45,000 square feet per man-day would assure adequate contract performance (but which would mean the use of less than the number of workers required by the invitation) as opposed to the Air Force's requirement of 20,000 to 30,000 square feet per man-day. While, as explained below, Able's protest against the use of manning tables is untimely, it should be pointed out that we have approved of the use of manning standards of the same nature as those involved in the present case. 51 Comp. Gen. 423 (1972). Moreover, the Air Force states that the manning criteria of 30,000 to 45,000 square feet per man-day will not provide the type of service required by the invitation which was structured in such a way as to upgrade and improve the overall quality of the required services. Thus, we do not object to the contracting officer's rejection of Able's bid, it being apparent that its bid prices were predicated upon furnishing less than the number of workers required by the invitation.

Also, in this connection, Able contends that the bid of Felix Building Maintenance & Supply Co. (Felix), the successful bidder for item 6, in the amount of \$9,165.37 per month, will yield a profit of \$4,000 per month. As stated above, computations based on the contract minimum manning requirements indicate that the per month bid for item 6 should be at least \$8,991. Since

we have held that the use of manning standards is proper, we know of no basis for concluding that the latter figure is erroneous. Therefore, we agree with the contracting officer's conclusion that there is no indication that Felix will realize a profit of \$4,000 per month for item 6.

Able also contends that Felix's bid for item 6 was not only not the low bid, but that it was not responsive since at bid opening time Felix's bid for items 1 through 6 was declared nonresponsive and that at a later date Felix was allowed to submit another bid which was supposedly accepted by the contracting officer. The record indicates that Felix's bid for item 6 was not low, the bids of Able and Clean Rite Co. Corp. (Clean Rite) being lower. However, when the low bid of Able was rejected and the next low bidder, Clean Rite, was determined to be nonresponsive, Felix was determined to be the low responsive and responsible bidder. The evidence of record indicates that Felix's bid was not declared nonresponsive at bid opening time since usually there is not sufficient time at bid opening to determine the responsiveness of all the bids. Apparently, at a later time, after the bids had been more carefully studied, it was determined that Felix's bid for items 1 through 5 was nonresponsive for failure to bid on subitems within major items. (Section D, paragraph B, of the solicitation provided that in order to be responsive each bidder must set forth a price for each subitem within a contract schedule item, but that bids need not be submitted on each schedule item to be responsive.) However, it was determined that Felix's bid on item 6 was responsive. The contracting officer categorically denies that Felix was allowed to submit another bid for item 6 at a later date. Since Able has introduced no evidence in support of this contention, there is no basis for us to question the contracting officer's denial or his action in accepting Able's bid for item 6.

Finally, Able contends that the use of manning charts in determining adequacy of a bid is fallacious and that the criteria or standards for determining responsiveness of bids were non-existent at the time of bid submission. Concerning these contentions, section 20.2(a) of our Bid Protest Procedures and Standards, 4 C.F.R. § 20.2(a) (1974), then in effect, stated in pertinent part:

"* * * Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of

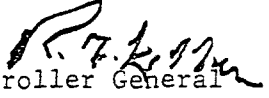
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proposals shall be filed prior to bid opening or the closing date for receipt of proposals. * * *

Regarding Able's contention that the use of manning charts in determining the adequacy of a bid is fallacious, since we did not receive Able's protest until February 12, 1975, some 7 months after bid opening, this portion of Able's protest must be considered untimely. Since, as previously mentioned, we have held that use of manning standards is not improper, we do not find that this portion of Able's protest raises any issues significant to procurement practices and procedures.

Regarding Able's third contention that the criteria or standards for determining responsiveness of bids were nonexistent at time of bid submission, this is also a matter which should have been protested to our Office prior to bid opening and is, therefore, untimely. See Square Deal Trucking Company, Inc., B-182436, February 19, 1975. Again, we do not find that this portion of Able's protest raises any issues significant to procurement practices and procedures.

In view of the foregoing, Able's protest is denied.


Deputy, Comptroller General
of the United States