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DECISION



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

FILE: B-198406

DATE: June 16, 1980

MATTER OF: Utley-James, Inc. *DLG 4803*

DIGEST:

- INVOLVING*
1. Contrary to *[C]* protesters' interpretation of IFB's "Basis of Award" provision *[]* GAO does not find that it modified IFB's standard "Additive or Deductive Items" clause. Accordingly, awardee may not be selected on basis of low aggregate price for all items where funds available at bid opening were insufficient to cover the low aggregate price.
 2. Where, under standard "Additive or Deductive Items" clause, funding available prior to bid opening was insufficient to cover even the lowest base bid (IFB had additive items but no deductive items), award may be made, if funds are subsequently acquired, only to bidder submitting lowest base bid.

Utley-James, Inc. (U-J) protests the tentative decision of the Army Corps of Engineers to award a contract to another bidder under invitation for bids (IFB) No. DACA45-80-B-0074, issued by the Corps' Omaha District, Omaha, Nebraska. U-J contends that a proper interpretation of the solicitation's "Basis of Award" provision establishes U-J as the low aggregate bidder for the bid schedule's basic bid item and two additive items, and that it should receive the award on that basis.

This solicitation is for certain rehabilitation work to be performed at the Detroit Arsenal Tank Plant, identified as Subprojects (SP) Nos. 1, 2, 5, 6, and 8. As originally issued, the IFB Schedule provided for a lump sum bid on "all work complete" plus a bid on one additive item, A-1, representing the additional cost of

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installing polyisocyanuate insulation in lieu of mineral fiber insulation in the metal wall siding work.

In amendment 0003 to the IFB, among other changes, the Corps restructured the bidding Schedule so that the basic bid included only SP Nos. 2, 5 and 6: SP No. 1 became additive A-1 and SP No. 8 became additive A-2. The additional cost of changing insulation became "Energy Alternate" EA-1 which, as shown below, was not to be considered in the evaluation of bids.

The amended bid schedule then appeared as follows:

"Bidding Schedule"

<u>Item No.</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
<u>BASIC BID</u>					
**1	All work for SP-2 Replace Fire Water Mains; SP-5 Seal Monitors and Skylights; and SP-6 Insulate Exterior Walls, Bldg. #4, complete	Job	L.S.	XXX	\$ _____
<u>ADDITIVES</u>					
A-1	All work for SP-1 Replace Domestic Water Mains, complete	Job	L.S.	XXX	\$ _____
A-2	All work for SP-8 Rehab Railroads, complete	Job	L.S.	XXX	\$ _____
<u>ENERGY ALTERNATE</u>					
EA-1	Additional costs for changing insulation in walls to Poly- isocyanuate insulation with a 'U' value of * _____ complete	Job	L.S.	XXX	\$ _____

*[to be inserted by each bidder]

For basis of award see para. 18a page IB-7.

****NOTES:**

1. Bid prices must be entered for all items of the Schedule. * * *

Amendment 0003 also added a "Basis of Award" provision which stated:

"18a. BASIS OF AWARD. The low bidder for purposes of award shall be the conforming responsible bidder offering the lowest aggregate amount for the Basic Bid and additives 1 and 2 as determined by paragraph 'Additives and Deductives' above. The Energy Alternate, Item EA-1, will not be considered in the determination of low bidder and will only be awarded if it is determined that the amount bid is in the best interests of the Government concerning cost effectiveness, insulating value, reasonableness and acceptability of the bid, and the availability of funds."

The "Additive and Deductives" paragraph referred to in the Basis of Award provision specified:

"18. ADDITIVE OR DEDUCTIVE ITEMS. (1968 APR) The lower bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount

shall be added if award thereon can be made within such funds. * * * In any case, all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. * * * After determination of the low bidder as stated, award in the best interests of the Government may be made to him on his base bid and any combination of his additive or deductive bid for which funds are determined to be available at the time of award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items."

We also note that the Invitation for Bids, Standard Form 20, provided:

"Basis for Award. The basis for award is set forth in paragraph 10 of the Instructions to Bidders (Standard Form 22) as modified herein. It is intended that award will be made to one bidder with or without additives. (See paragraph 'Additive or Deductive Items' herein.)" (Emphasis added.)

This provision was in the IFB as originally issued and was never expressly amended.

The Corps of Engineers reports that \$9,958,000 constituted the available funds at the time bids were opened. The abstract of bids reveals that Pyramid Construction Company, Inc. submitted the low basic bid price in the sum of \$10,022,000, while U-J was second low at \$10,105,900. For additive A-1, the firms quoted \$295,000 and \$218,000, respectively; for A-2, they quoted \$220,000 and \$174,000, respectively. Thus, Pyramid is low if bids are evaluated on the basis of the basic bid alone, or the basic bid plus either additive; U-J is the low bidder only if bids are evaluated on the basis of the basic bid plus both additive items.

Referencing the "Additive or Deductive Items" paragraph set out above, the Corps admits that the funding available prior to bid opening was less than any of the base bids submitted. Nevertheless, it recommends that Pyramid be designated the low bidder for the prospective award. The Corps predicates its position on prior decisions of this Office holding that where funds determined available prior to bid opening are insufficient to cover the lowest base bid, award may be made, if funds can be subsequently attained, only to the lowest bidder on the least work [in this case Pyramid, on the basis of its low base bid].

U-J, on the other hand, submits that an objective reading of the intent of the Additive or Deductive Items clause, supra, as "modified" by paragraph 18(a)'s "Basis of Award" provision, is that the low bidder for purposes of award shall be the conforming responsible bidder offering the lowest aggregate amount for the basic bid and two additives. In U-J's view, paragraph 18, as "modified" by 18(a), does not provide that the low base bid may be considered for purposes of award. U-J therefore submits that comparisons of basic bids alone, or basic bids plus only one of the two additives, would be improper and contrary to the intent of the IFB.

In this regard, U-J directs attention to the word "aggregate" appearing in 18(a), and the dictionary definition of that term as a "whole total." In support of its contention that 18(a) was intended to modify paragraph 18, the Additive or Deductive Items clause, U-J points out various grammatical changes in the first sentence in paragraph 18(a) when compared with similar phraseology in paragraph 18, including the "removal" of other words which appeared in paragraph 18. U-J submits that the intent of paragraph 18 was thereby "clarified" in accordance with U-J's interpretation. Moreover, the placement of two asterisks on the bid schedule next to the Basic Bid item "instead of a remote part of the Bidding Schedule," which was coupled with an IFB requirement that bid prices must be entered for all items on the schedule, underscores the purported intent of the agency to determine the awardee on the basis of the low aggregate bid for the basic bid plus both additives.

Acknowledging that funds available before bid opening were less than any bidder's basic bid, U-J contends that in order to carry out the intent of the IFB's award provisions, the Corps should be directed to seek additional funding to encompass U-J's aggregate price for the basic bid plus both additives, and to award the project to U-J accordingly.

In support of its position, U-J cites two prior decisions of this Office: Jacobs Transfer, Inc; Kane Transfer Company, 53 Comp. Gen. 797 (1974), 74-1 CPD 213, and our advance decision to the Secretary of Agriculture appearing at 50 Comp. Gen. 583 (1971).

We cannot accept U-J's interpretation that the Basis of Award provision (paragraph 18(a)) has modified or supplanted the method for determining the awardee set forth in the Additive or Deductive Items clause (paragraph 18). To the contrary, we believe that the IFB clearly established that the selection of the awardee would be governed and controlled by the Additive or Deductive Items Clause without modification. We base our conclusion on the fact that 18(a) provides no indication that paragraph 18 was to be deleted, superseded or modified in any respect; instead, 18(a) expressly provides for the evaluation of the successful bidder " * * * as determined by paragraph 'Additives and Deductives' above." (Emphasis added.) In addition, the IFB's Standard Form 20 stated the award would be made "with or without additives" according to the "Additive or Deductive Items" clause.

The terms of a solicitation should be read and reasonably construed together in a manner that will give effect to all pertinent provisions. See Tymshare, Inc., B-193703, September 4, 1979, 79-2 CPD 172; Leo Kanner Associates, B-190115, March 14, 1978, 78-1 CPD 200. We believe that the only reasonable interpretation of the Basis of Award provision consistent with the integrity of Paragraph 18 is that the awardee will be determined pursuant to paragraph 18 on the basis of the prices submitted for the basic bid and the additives

without consideration of the price submitted for the Energy Alternative item; thus, pursuant to paragraph 18, a determination of the awardee may be made on the basis of the lowest aggregate amount for the basic bid plus both additives only if such aggregate falls within funding determined available before award (in this case, it did not). While the first sentence of the Basis of Award provision might be considered confusing if standing alone, we believe a reading of that provision in its entirety reasonably indicates that the vernacular "lowest aggregate amount for the Basic Bid and additives 1 and 2 as determined by paragraph 'Additives and Deductives' above" was merely intended to apprise prospective bidders that the price submitted for the Energy Alternate item would not be considered when submitted prices were subjected to the evaluation scheme set out in paragraph 18.

To construe the Basis of Award provision in the manner urged by U-J would render nugatory the provision in paragraph 18 for determination of the awardee on the basis of the "low aggregate amount for the first or base bid item, plus * * * those additive * * * items providing the most features of the work within the funds determined by the Government to be available before bids are opened." (Emphasis added.) In this regard, we have held that one section of a solicitation should not be read in a manner which would render other provisions meaningless. See Sperry Univac Computer Systems, B-194003, October 29, 1979, 79-2 CPD 300. By adopting U-J's interpretation, the underlined phraseology of paragraph 18 would in effect be nullified if, as here, there existed insufficient funding prior to bid opening to encompass the lowest submitted aggregate price for a base bid plus both additives.

The protester's argument also ignores the statement on the Standard Form 20 that the Corps "intended" that an award be made "with or without additives" according to the "Additive or Deductive Items" clause.

With regard to the two decisions cited by U-J in support of its interpretation, in Jacobs Transfer, Inc., et al., supra, we held that bids could not be

evaluated on the basis of a scheme orally announced at the bid opening and which differed from that set forth in the IFB; we find it irrelevant. The second decision, 50 Comp. Gen. 583, supra, involved an IFB which did not contain the additive or deductive items clause but instead provided:

"A. Base Bid

* * * * *

NOTE - Award of this contract will be made on the lowest responsive bid for Base Bid Item A.

Bids must be submitted for both the Base Bid and Additive Bid Items in order for a bid to be considered responsive.

Additive Bid Items Instructions

Bidders are requested to submit a lump-sum offer for each of the items listed below. If appropriated funds are available for this Project, the Government reserves the right to add to Item A. BASE BID offer any single additive item or any group of additive items. Separate awards will not be made."

When bids were opened, the record revealed that the low overall (lump sum) bid was not the bid offering the lowest Base Bid price. The contracting officer requested our opinion whether an award might be made to the low overall bid notwithstanding the Base Bid award provision, quoted above. We concluded that award should be made to the low overall bid. Critical to our conclusion was the fact that, unlike the present case, the low overall (i.e., aggregate) bid fell within the appropriated funds available prior to bid opening. In view thereof, we determined that award to any but the low overall bidder would violate the statutory requirement of 41 U.S.C. § 252(c) requiring award to the responsible conforming

bidder whose bid is "most advantageous to the Government." In reaching our conclusion, we expressed doubt that the solicitation's provision for award on the basis of the base bid only, without regard to a bidder's overall price, was in conformity with the requirement of 41 U.S.C. § 252(c), and recommended that this defect be remedied in future procurements.

Notwithstanding the defect in that solicitation's award provisions and the absence of the Additive and Deductive Items provision herein involved, the fact remains that in the cited decision there was available funding prior to bid opening to cover the low lump sum (aggregate) bid whereas, in the instant case, available funding at bid opening was inadequate to cover even the lowest basic bid. For that reason, we find that the cited decision fails to support U-J's position.

We therefore conclude that the "Additive or Deductive Items" clause controls the evaluation of bids under this IFB and that it was not modified by the "Basis of Award" clause as contended by the protester.

Since, in the instant procurement, existing funding prior to bid opening was insufficient to cover any bidder's base bid item, there remains for resolution whether, under the Additive or Deductive Items clause, any bidder may be selected for award. We have addressed this issue, holding:

" * * * In such a situation where funds determined available prior to bid opening are insufficient to cover the lowest base bid, award could be made, if funds can be obtained, only to the bidder submitting the lowest bid on the least work. Of course after funds are obtained award could also include additive[s] but only if some other responsible bidder has not submitted a lower bid on that combination. * * * " B-170795, October 6, 1970. See also, B-173471, November 19, 1971, and B-175297, July 10, 1972.

In view thereof, we concur with the Corps' position that Pyramid should be determined the low bidder on the basis of its low base bid and, should additional funds be subsequently obtained, award may be made to Pyramid for its base bid item or base bid plus any combination of additive items for which some other bidder has not submitted a lesser total amount.

The protest is denied.

Shilton J. Fowler

Acting Comptroller General
of the United States