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

FILE: B-220602 **DATE:** December 31, 1985

MATTER OF: T.R. Ltd.

DIGEST:

Protest is sustained where IFB's flawed evaluation scheme makes it impossible to determine which bid represents the lowest cost to the government.

T.R. Ltd., trading as Raley's Emergency Road Service and Henry's Wrecker Service (Raley), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. 3-6-12, issued by the United States Department of the Interior, National Park Service (Interior), for towing and wrecker services.

We sustain the protest.

The IFB's specifications required the contractor to provide all labor, materials and equipment for towing, wrecker and miscellaneous servicing of parked or disabled United States Park Police (USPP) and civilian vehicles on a first priority basis. Assistance for private motorists was to be at the expense of the motorists, and assistance directed by the USPP for a disabled USPP vehicle was to be at the expense of the government at rates in accordance with the IFB's Rate Schedule.

The Bid Schedule contained three bid items.1/ Bidders were instructed that "Bids may be submitted on Items 1 and 2, or as an alternate bid on Item 3 with a credit to the government." Items 1 and 2 required bids for services on an hourly rate basis for a base year and 2 option years. Item 3, captioned "ALTERNATE BID," required the contractor to specify a monthly rate it would pay the government for the right to be the first contractor called to service disabled or impounded vehicles.

1/ The IFB's Bid Schedule and Rate Schedule are set forth in an appendix to this decision.

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Attached to the Bid Schedule was a Rate Schedule on which bidders were instructed to submit rates which would be charged distressed motorists for services customarily accomplished by a commercial towing company. The Rate Schedule stated that "The contractor shall provide to the contracting officer prior to award a schedule of the rates which will be charged distressed motorist." The Rate Schedule also provided that "these rates shall be incorporated in the contract and will remain in effect for the life of the contract or unless otherwise changed by the contracting officer." At the bottom of the Rate Schedule was a legend: "PLEASE RETURN WITH BID."

Three bids were received. Raley bid on all three items. One bidder bid only on item 3. The third bidder inserted zero on items 1 and 2 and prices for item 3. Raley offered the highest rate on item 3, but was rejected as nonresponsive because it did not insert a fixed price on the Rate Schedule for "5 gallons of fuel and start." (Raley inserted "station rates".) The contracting officer also concluded that Raley's pricing of all three items on the Bid Schedule made it impossible to determine if Raley intended to be reimbursed by the government for its services, if it intended to show a credit to the government, or if it intended to subtract the sum of items 1 and 2 from item 3 and credit the government with that difference. The contract was awarded to AnA, Inc., the bidder offering to pay the second highest monthly rate.

Raley protests that it set forth without ambiguity the exact amount it would pay for the right to be the designated towing company. According to Raley, the Rate Schedule cannot be considered part of the contractor's bid because the solicitation does not require that the Rate Schedule be submitted with the bid, but rather prior to award. Raley contends it should have been allowed to submit a definite price figure for gasoline after bids were opened and prior to award.

It is unnecessary to decide the merits of Raley's protest because, upon our review of the solicitation, we find the solicitation to have been defective for not assuring the most favorable cost to the government. The method used by Interior to evaluate bid prices under item 3 was deficient in its failure to consider charges to the government for services rendered to disabled USPP vehicles. Our Office has consistently held that award in a sealed-bid procurement must be based on the most favorable cost to the government. See _Summerville Ambulance, Inc._, B-217049, July 1, 1985, 85-2 C.P.D. ¶ 4; _Go Leasing, Inc._, et al., B-209202, et al., Apr. 14, 1983, 83-1 C.P.D. ¶ 405. Moreover, we have stated that the lowest bidder must be measured by the total work to be awarded. 50 Comp. Gen. 583 (1971); Square Deal Trucking Co. Inc., B-183695, Oct. 2, 1975, 75-2 C.P.D. ¶ 206. Here, item 3 requested a lump-sum price from the contractor for the privilege of being the first contractor called to provide the specified services. Interior evaluated bids only by comparing rates which bidders offered to pay the government on item 3. Yet the specifications provided that assistance for a disabled USPP vehicle would be at the expense of the government, at rates in accordance with the Rate Schedule. If only the lump-sum prices on item 3 are evaluated, it is impossible to determine which bid results in the lowest cost to the government, since a bid offering a high price on item 3 might not be as advantageous as a bid offering a lower price but charging less for servicing government vehicles.

Since there was no assurance that any selection based only on prices offered under item 3 would result in the lowest contract cost to the government, we recommend that Interior resolicit this requirement using an evaluation scheme accounting for charges to the government for services rendered to disabled USPP vehicles. We recognize that for the safety of park visitors, the convenience of the motoring public, and assistance with law enforcement functions, it is critical that the USPP retain an uninterrupted contract crane service. We therefore recommend that the existing contract with AnA, Inc., not be terminated for the convenience of the government until Interior receives an acceptable bid under the resolicitation.

The protest is sustained.

for Milton J. Socolar
Comptroller General
of the United States