



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: General Engineering and Machine Works

File: B-223929

Date: October 27, 1986

DIGEST

1. An invitation for bids, which required bidders to submit prices for two schedules and identified the items in Schedule II as optional supplies and services, is defective where the solicitation fails to indicate whether the evaluation for award will include or exclude the optional Schedule II items.

2. Although solicitation failed to indicate whether the evaluation for award would include or exclude optional items, protester's claim for costs is denied since record fails to establish that agency's evaluation of both definite and optional items was arbitrary or that protester was unreasonably excluded from the competition.

DECISION

General Engineering and Machine Works (GEMW) protests the award of a contract to W.A. Craig, Inc., under invitation for bids (IFB) No. DACW07-86-B-0023, issued by the United States Army Corps of Engineers, San Francisco District. The IFB was issued as a total small business set-aside for the repair and alteration of the government-owned derrick boat, "RACCOON." GEMW contends that it was the low, responsive, responsible bidder and should have been awarded the contract.

We sustain the protest.

The IFB required bids to be submitted on two schedules. Schedule I contained ten lump sum job items for the provision of all labor, materials and equipment to repair the RACCOON. Schedule II, entitled "Indefinite Items," required the submission of prices for eleven additional items. The IFB, in section H, paragraph H-1, identified the items in Schedule II as optional supplies and services and indicated that the contracting officer could require delivery of any of the items specified by giving written notice to the contractor at any time within the contract period.

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GEMW submitted the low bid on Schedule I. W.A. Craig was the low bidder based on an evaluation of both Schedule I and II prices. The contract was awarded to W.A. Craig on July 25 and because the Army did not receive notice of the protest within 10 calendar days of the award, performance was not suspended. Federal Acquisition Regulation (FAR), 48 C.F.R. § 33.104(c)(5) (1985).

GEMW argues that the Army's consideration of the Schedule II prices was improper because the IFB did not state that the optional supplies and services set forth in the schedule would be considered in determining the low bid.

The Army acknowledges that the Schedule II items were optional and that the omission of any notice that these items would be included in the evaluation arguably rendered the IFB ambiguous. The contracting officer indicates, however, that the evaluation of both schedules was required because the IFB stated that only one contract would be awarded. The Army contends that, despite any uncertainty among bidders as to the basis on which bids will be evaluated for award, the award to W.A. Craig resulted in the Army's needs being met at the lowest overall price.

An IFB must clearly state the basis on which bids will be evaluated for award, and we have recognized that an IFB is defective where it fails to advise bidders as to whether prices submitted for optional supplies or services would be evaluated in determining the successful bid. See Browning Ferris Industries of the South Atlantic, et al., B-217073, et al., Apr. 9, 1985, 85-1 CPD ¶ 406. Moreover, the FAR, 48 C.F.R. § 17.203(b), specifically provides that a solicitation which calls for bidders to submit option prices must state whether the evaluation will include or exclude option prices. Temps & Co., B-221846, June 9, 1986, 65 Comp. Gen. _____, 86-1 CPD ¶ 535. Consequently, the solicitation here was clearly defective for failing to adequately advise bidders of the basis upon which award was to be made, and therefore was not a proper vehicle for effecting award.

In view of the fact that performance has been completed, we are unable to recommend that the Army take corrective action. We also do not find that the circumstances warrant the payment to GEMW of its bid preparation expenses or costs of filing and pursuing its protest. Our Bid Protest Regulations allow a protester to recover its bid preparation costs only where the protester had a substantial chance of receiving the award but was unreasonably excluded from the procurement, and we do not recommend a remedy delineated in

4 C.F.R. § 21.6(a)(2-5) (1986). Edgewater Machine & Fabricators, Inc., B-219828.3, Apr. 14, 1986, 65 Comp. Gen. _____, 86-1 CPD ¶ 359. Also, our regulations only permit recovery of the costs of filing and pursuing a protest in situations where the protester is unreasonably excluded from the procurement. 4 C.F.R. § 21.6(e).

Here, we find that GEMW was afforded the same opportunity to compete for this requirement as W.A. Craig. While GEMW indicates that past solicitations for similar requirements were awarded solely on the basis of definite items, there is nothing in the FAR or in the current solicitation which required the Army to evaluate bids in this manner. The IFB was silent on the basis for evaluation and we therefore are unable to conclude that the Army's actions in considering the optional items was arbitrary or that GEMW was entitled to any award under the IFB or could reasonably expect that the Army's evaluation would be restricted solely to the definite items. In this respect, we point out that a bidder may not blindly make its own assumptions regarding the meaning of a defective or ambiguous solicitation and then expect relief when the agency does not act in the manner the bidder assumed it would. See Avantek, Inc., 55 Comp. Gen. 735 (1976), 76-1 CPD ¶ 75. Clearly, had GEMW raised the issue of how bids would be evaluated before bid opening, the defect could easily have been cured.

Instead, GEMW chose to participate in the competition without knowing how the Army would evaluate bids and was afforded the opportunity to submit its best price for all items. Under these circumstances, we conclude that GEMW was not unreasonably excluded from the competition so as to entitle the firm to recover its bid preparation expenses and protest costs. Temps & Co.--Claim for Costs, B-221846.2, Aug. 28, 1986, 65 Comp. Gen. _____, 86-2 CPD ¶ 236.

The protest is sustained.

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