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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Keister Construction, Inc.
File: B-227027
Date: August 5, 1987

DIGEST

Where bid contains unexplained discrepancy between total bid price and sum of line item prices, and is low under only one interpretation, the bid is ambiguous and must be rejected, notwithstanding bidder verification of intended price.

DECISION

Keister Construction, Inc., protests the award of a contract to Robert Feaster Corporation under invitation for bids (IFB) No. DACA31-87-B-0002, issued by the U.S. Army Corps of Engineers for the construction of a recreation center and related maintenance facility in Lewisburg, Pennsylvania. Keister contends that the award was improper since it was not made to the lowest responsive, responsible bidder.

We deny the protest.

The IFB required separate bid prices for six items and a total base bid amount. A single award was to be made to the bidder offering the lowest total price. In completing the price schedule, Keister allegedly read the bid schedule as requiring that the prices for items 0002, 0003 and 0004 be included in the item 0001 price, and that the prices for those three items be furnished for information purposes only.

Keister's stated total base bid of \$1,319,200 was the apparent low total bid; Feaster submitted the next low bid of \$1,347,775, which exceeded Keister's by approximately \$28,000. During preparation of the bid abstract, the Corps discovered that the sum of Keister's line item prices in fact was \$1,374,300, which is \$55,100 in excess of the total indicated in its bid (\$1,319,200). Although Keister's price therefore was recorded on the abstract as \$1,374,300, leaving Feaster the low bidder, the Corps requested that

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Keister verify its bid. Keister responded by explaining its interpretation of the price schedule as requiring the inclusion of the prices for the second, third and fourth items in the price for the first, and concluding that its total base bid amount of \$1,319,200, the sum of item numbers 0001, 0005, and 0006, represented its intended total price. Relying on Keister's verification, the Corps awarded the firm a contract based on its stated total bid amount.

Shortly after the award, Feaster filed an agency-level protest challenging this award. Upon review of this protest, the Corps concluded that Keister's bid was ambiguous, i.e., subject to more than one reasonable interpretation, and that the bid therefore should have been rejected. The Corps immediately terminated Keister's contract for the convenience of the government, and awarded a replacement contract to Feaster.

Preliminarily, the Corps contends that this protest should be dismissed as untimely under our Bid Protest Regulations, 4 C.F.R. part 21 (1987), because Keister did not file its protest within 10 working days of receiving the Corps' telegram terminating its contract, the date the Corps argues Keister should have known of the award to Feaster. 4 C.F.R. § 21.2(a)(2). We disagree. The telegram notifying Keister of the termination did not specify any reasons for the action, and did not indicate that the Corps intended to reaward the contract to Feaster; the record indicates that Keister first became aware of this information several weeks after receipt of the telegram. Since it appears Keister filed its protest within 10 working days of the date it received this additional information, its protest to our Office is timely.

As for the merits, Keister argues that its bid is subject to only one reasonable interpretation, i.e., that its intended bid price is its stated total base bid amount of \$1,319,200, and that this construction is clearly ascertainable from the face of its bid. As is evidenced by its worksheets, Keister notes, this bid amount conforms to the instructions of the price schedule as it understood them to be. Moreover, Keister believes any doubts concerning its bid were resolved by its bid verification. Keister concludes that the Corps' initial award of the contract based on its verified bid amount of \$1,319,200 was correct.

We agree with the Corps that Keister's bid was ambiguous as to price and thus should not have been considered for award. Although the line item/total bid discrepancy may have resulted from the reason proffered by Keister--that it included line items 0002 through 0004, in the price for item 0001, and thus never intended to separately add those three

items into its total price--another equally reasonable explanation is that Keister intended, but simply neglected, to add these prices into its total bid. Under this second interpretation, the stated total bid amount would understate Keister's intended price. Although Keister would have us look to its worksheets to confirm its interpretation, because Keister's bid is low under only one of the two interpretations, worksheets and other materials extraneous to the bid itself cannot be considered to clarify or explain the ambiguity. See Bill Strong Enterprises, Inc., B-200546, Mar. 5, 1981, 81-1 CPD ¶ 173. Exclusion of these materials prevents a bidder, through the disclosure or retention of relevant documents, from choosing between a bid price resulting in award and one which does not. See Hudgins Construction Co., Inc., B-213307, Nov. 15, 1983, 83-2 CPD ¶ 570. For the same reasons, Keister's verification of its bid also may not be considered in determining its intended price. Id.

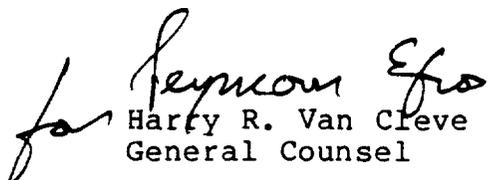
Although Keister states that it is not arguing that the IFB's bid schedule was ambiguous or misleading, the proper reading of the schedule is relevant in considering the acceptability of Keister's bid: if Keister's interpretation were correct, obviously, its alleged bid pricing method would have to be viewed as correct and thus acceptable. As we read the IFB, however, Keister's interpretation is clearly incorrect.

Item 0001 on the bid schedule covered "all costs in connection with the construction of the Lewisburg USARC, including utilities . . . and installation of food service equipment, lockers, wire mesh partitions and dehumidifiers." The item description also stated, parenthetically, "material costs for these items to be supplied under items 0002, 0003, and 0004 below." Items 0002 through 0004 covered all costs in connection with furnishing food service equipment, lockers and dehumidifiers, and wire mesh partitions, respectively, and each of these items stated parenthetically that "installation of [these items] is covered under Bid item 0001 above."

While we think the schedule could be somewhat confusing, we find nothing in the item description that reasonably could be read as calling for the inclusion of all item 0002, 0003 and 0004 costs in item 0001. Rather, upon a careful reading, we think it is fairly clear that bids were merely to include specified material costs under items 0002 through 0004, with all other costs related to installation included in item 0001. Thus, we find that Keister's bid was not consistent with the proper interpretation of the bid schedule. See Miama Corp., B-204554, Dec. 28, 1981, 81-2 CPD ¶ 499.

Under these circumstances, Keister's bid was unacceptable and should have been rejected at the outset. We therefore agree with the Corps' decision to terminate Keister's contract and reaward the contract to Feaster, the low, responsive, responsible bidder. See Marsellis-Warner Corp., 65 Comp. Gen. 76 (1985), 85-2 CPD ¶ 590.

The protest is denied.

for 
Harry R. Van Cleave
General Counsel