



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Colombe, Incorporated

**File:** B-228173

**Date:** December 15, 1987

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### **DIGEST**

1. General Accounting Office will not disturb award because solicitation did not contain adequate estimates for certain items where it appears acceptance of bid will satisfy government's needs without prejudice to any bidder.
2. General Accounting Office will not consider a protest against an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of the contracting officials or the failure to apply definitive responsibility criteria.

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### **DECISION**

Colombe, Incorporated protests the award of a fixed-price contract under solicitation No. BIA-M00-87-32 issued by the Albuquerque Area Office of the Bureau of Indian Affairs (BIA), United States Department of the Interior. Colombe asserts that under any rational application of evaluation factors in the solicitation, its bid is low and protests award of a contract to the United Sioux Tribes of South Dakota Development Corporation (UST).

We dismiss the protest in part and deny it in part.

On June 19, 1987, BIA issued the above solicitation, seeking offers for various services related to title research within reservations, colonies and other lands under the jurisdiction of the Albuquerque, Navajo and Phoenix Area Offices of BIA. Items 1 - 5 generally contained a description of title search services to be provided and estimates of the amount of work to be performed under these items. Under item 3,

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the solicitation also requested unit prices for three miscellaneous services which might be necessary, but were not covered by the item 3 description: first, preparation of administrative modification for manager's signature; second, preparation of Administrative Law Judge (ALJ) order of modification and third, examination of title status reports where no change has occurred (approximately 13,000 tracts). No estimates for the first two miscellaneous services were provided.

The solicitation requested unit prices for each item of work described. The solicitation provided that the government would award a contract to the responsible offeror whose offer would be most advantageous to the government, cost or price and other factors considered. The solicitation did not indicate how the agency would arrive at a total price for award. Three offers were received from United Sioux Tribes, Jones & Company and Colombe Incorporated.

Noting that the total of its unit prices was less than the totals of either UST or Jones, Colombe asked the contracting officer's representative to confirm its status as low bidder. The representative declined to confirm Colombe's status without speaking first to the contracting officer, specifically noting the absence of estimated quantities for ALJ orders and administrative modifications under item 3.

On September 1, the contracting officer called all the offerors and, explaining that the offers had exceeded government estimates, asked for best and final offers. Jones declined to lower its cost. On September 4, UST and Colombe submitted offers which were evaluated as follows:

	<u>UST</u>		<u>COLOMBE</u>	
	<u>Unit</u>	<u>Extended Amount</u>	<u>Unit</u>	<u>Extended Amount</u>
I	\$10.00	\$80,000	\$ 8.00	\$ 64,000
II	9.50	9,000	8.00	16,000
III	4.50	15,750	4.50	15,750
A.	12.00	12	12.00	12
B.	18.00	18	15.00	15
C.	2.75	35,750	3.00	39,000
IV	3.80	91,200	4.50	108,000
V	4.75	3,800	6.00	4,800
	<u>\$65.30</u>	<u>\$245,530</u>	<u>\$61.00</u>	<u>\$247,577</u>

Item III B was one of two miscellaneous services which did not have an estimated quantity and was bid on the basis of a quantity of one. The contracting officer's representative informed Colombe on September 8 that a preliminary review

indicated that after extending unit prices by estimated quantities, UST's offer appeared low. Colombe objected, pointing out that if the estimated number of ALJ orders under Item III B exceeded 683, Colombe's offer would be low because Colombe's price is lower than UST's price by \$3.00 for Item III B.

On the next day, Colombe was informed that the contracting officer had determined UST to be low bidder, using a formula that extended unit prices by estimated quantities where estimates were available and estimating administrative modifications and judge's orders, the two services for which the BIA did not have estimates, at a quantity of one each.

On September 14, Colombe filed a protest with this Office on the grounds that the award to UST is improper because Colombe's bid is low if bids are evaluated properly, and because UST is incapable of proper performance.

Here, BIA's adding of the unit prices for items III A and B to the extended total prices for other items may not provide the lowest price for the total work to be awarded. An evaluation scheme such as this generally renders a solicitation defective. See Professional Carpet Service, B-220913, Feb. 13, 1986, 86-1 CPD ¶ 158; A to Z Typewriter Co.--Reconsideration, B-218281.2, Apr. 8, 1985, 85-1 CPD ¶ 404.

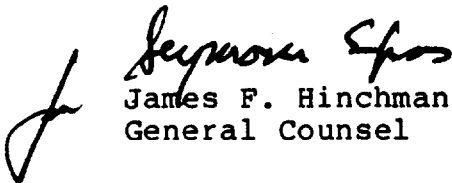
Ordinarily, where a solicitation is defective, resolicitation under a revised solicitation is appropriate. See Professional Carpet Service, B-220913, supra. However, the mere existence of defective solicitation provisions may not in itself be a sufficient ground for disturbing an award if the award will satisfy the government's needs without prejudice to any bidder. Fluid Systems Inc., B-225880, Jan. 6, 1987, 87-1 CPD ¶ 20.

BIA argues that it is simply unable to estimate the number of ALJ orders needed under Item III B. BIA explains that in view of a recent United States Supreme Court decision holding the Indian Land Consolidation Act unconstitutional, the number of probates involving ALJ action cannot be determined and that, in any event, the ALJ's, not the contractor, will prepare the majority of the orders necessitated by the Supreme Court decision. Thus BIA, although indicating it may need more than one order prepared under III B, cannot estimate the exact number and characterizes Colombe's estimate of at least 683 orders as excessive and speculative. Colombe acknowledges that it does not know the number of orders that might be required, although it does insist that the number of such orders will exceed one.

In these circumstances, it is not clear that Colombe may have been prejudiced by the agency's award decision. If the two items for which estimates are not provided were deleted from the solicitation, UST remains low by more than \$2,000.00. While Colombe could become low if there would be at least 683 ALJ job orders for the contractor, BIA reports that the number will be nowhere near 683 since the ALJ's will prepare the majority of the orders, and the protester offers no evidence to the contrary. Further, both Colombe's and UST's unit and thus extended price for item III A are the same no matter what the correct estimate. Under these circumstances, we cannot conclude that the agency's award decision may have prejudiced Colombe.

Colombe's assertion that UST is incapable of proper performance amounts to a challenge to a affirmative determination of responsibility, an issue that absent a showing of possible fraud or bad faith on the part of the contracting officials, or the failure to apply definitive responsibility criteria, is not for consideration by our Office. 4 C.F.R. § 21.3(f)(5) (1987); Varga Enterprises, Inc., B-228043, Oct. 15, 1987, 87-2 CPD ¶ 364. There has been no such showing.

Accordingly, the protest is dismissed in part and denied in part.

  
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General Counsel