



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: East Coast Support Services, Inc.

File: B-231103

Date: August 26, 1988

DIGEST

1. Inclusion in solicitation of allegedly inaccurate estimates of level of effort necessary to perform work requirements is not a material solicitation defect where other more pertinent information is provided in solicitation which allows the bidders to prepare their bids intelligently and on a common basis.
2. Allegation that contracting officials acted in bad faith in conduct of procurement is denied where allegation is based purely on supposition and conjecture and is not supported by the record.
3. Bid bond properly signed by two individual sureties is not rendered materially deficient because of sureties' failure to list all other surety obligations on Standard Form 28.

DECISION

East Coast Support Services, Inc., the incumbent contractor, protests the terms of Department of the Navy invitation for bids (IFB) No. N62477-88-B-2914, issued as a small business set-aside for the operation and maintenance of motor vehicles at the Naval Station, Mayport, Florida. East Coast principally alleges that the estimated levels of effort set forth in the solicitation for certain tasks were based on inaccurate or insufficient data and thus were not reflective of actual performance requirements, and may have misled other bidders into understating their bid prices. East Coast also alleges that the bids submitted by four other bidders were defective and should have been rejected as nonresponsive.

We deny the protest.

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East Coast previously was awarded a contract to perform these same services at the Mayport Naval Station from October 1, 1986 through September 30, 1987, and possibly for four additional 1-year option periods. In view of proposed changes in the contract's scope of work and interest expressed by other firms in this requirement, however, the Navy decided that soliciting bids would be more advantageous than exercising the options. Issuance of the IFB followed.

The IFB included a detailed bid schedule divided into two line items. Item 0001 requested bidders to provide monthly and total fixed prices for labor and materials necessary to perform various management and operational functions. The vehicle operation and maintenance work to be performed was divided into 18 categories such as recordkeeping, crane operations, and general and major repairs. To assist firms in the preparation of their bids for this item, the solicitation included an inventory list of the vehicles to be maintained and serviced under the terms of the contract and also included estimated annual hours for most of the work categories. Item 0002, in relevant part, requested bidders to provide an estimated total price for materials and parts to be supplied in connection with the performance of paint and body work. Prices for these materials, as provided elsewhere in the solicitation, were to be negotiated between the government and the contractor based on invoice price. The solicitation also included a liquidated damages provision which specified standard deductions to be assessed against the contractor for failure to complete repairs within specified time periods.

Five firms responded to the IFB and East Coast was the high bidder. The low bidder was found ineligible for award as it was determined to be other than a small business for the purposes of this procurement. The Navy subsequently awarded a contract to DOD Contracts, Inc., the next low bidder. The Navy proceeded with contract award notwithstanding the East Coast protest, based on a determination that the services covered by this procurement were essential, and that urgent and compelling circumstances existed which mandated an immediate contract award.

Solicitation Improprieties

East Coast contends that the solicitation contained inaccurate or insufficient data regarding the level of effort required to perform each of the specified categories of work. Based on its experience under the prior contract, East Coast asserts, the estimated annual hours of work for many of these categories were grossly understated; East

Coast states that the actual hours it expended for record-keeping functions, crane services, vehicle washing and polishing, and total maintenance and repair work were 4,278 hours, 25,616 hours, 4,133 hours, and 30,759 hours, respectively, significantly in excess of the estimates provided in the solicitation, which were 3,600 hours, 19,592 hours, 1,800 hours and 27,919, respectively. More importantly, East Coast argues that these estimated levels of effort also should have been proportionally increased from the historical performance levels to reflect significant increases in the number of vehicles required to be maintained and serviced under the subject solicitation. Because of these understated levels, East Coast maintains, other bidders not familiar with the requirements may have been misled into underbidding.

The record indicates that the Navy based the IFB labor hour estimates primarily on historical data of actual contractor performance collected for the preceding 3-year period, with particular emphasis placed on East Coast's performance during the past year. In preparing the estimates for certain work categories (principally those relating to vehicle maintenance, recordkeeping and vehicle washing and polishing), we find that the Navy reasonably adjusted these historical levels downward to reflect anticipated increased efficient performance and production from the successor contractor; that is, the Navy considered the hours East Coast took to perform excessive, and not representative of the hours it expected an average contractor to experience. Additionally, we find nothing improper with the Navy's further reducing East Coast's historical hours to reflect minor reductions in the scope of work under the record-keeping, crane operations, and repair (deleted repairs for abused vehicles) categories. See DSP, Inc., B-220062, Jan. 15, 1986, 86-1 CPD ¶ 43.

It does appear that the Navy may have failed to adjust the estimates to take into consideration an increased level of effort that would be required as a consequence of an increase in the number of vehicles encompassed by the contract.^{1/} We believe, however, that any inaccuracies in these estimates would have had a minimal impact on the preparation of bids, and hence on this competition. These estimates, while furnished for the prospective bidders' benefit, were not the primary information made available to allow them to prepare their bids intelligently and on a

^{1/} Because East Coast did not raise this precise allegation until their conference comments, the agency has not rebutted it.

common basis. Indeed, the solicitation expressly cautioned bidders that the estimates were provided for informational purposes and were not to serve as the sole basis for bids. In our view, the critical information for bidders was the IFB's statement of work and inventory list identifying each vehicle to be maintained and serviced by its make, model and year of manufacture. With this detailed information, we think bidders should have been able to calculate with reasonable accuracy the labor and materials needed to perform each category of work, and thus their respective monthly and total contract bid prices.

East Coast also alleges that the Navy's failure to provide historical data for certain categories of work, such as scheduled bus, taxi and shuttle services, as well as historical data pertaining to the cost impact of the liquidated damages provision, precluded bidding on a common basis. We do not agree. There was no need for the Navy to provide estimated yearly hours of work for the transportation services, since the solicitation contained operating schedules which would enable bidders to calculate precisely the level of effort for these services.

Additionally, there was no need for the Navy to disclose data with respect to the impact of the liquidated damages provision. Liquidated damages assessed against a particular contractor relate solely to that contractor's performance and are not necessarily reflective of the damages to be assessed against another. Disclosure of historical data of such assessments thus would serve no useful purpose and the Navy's failure to furnish this data therefore did not prevent bidding on an equal basis. See DSP, Inc., B-220062, supra (solicitation requirements must be unambiguous, state minimum needs accurately and provide for equal competition.)

East Coast alleges that the contracting officials acted in bad faith in the conduct of this procurement; East Coast speculates that the Navy deliberately manipulated the historical data provided in the solicitation, that the Navy knowingly included an erroneous wage determination in the solicitation, and that the Navy deliberately failed to disclose all relevant information and actions bearing on this procurement. A showing of bad faith requires proof that contracting officials had a specific and malicious intent to injure the protester. Johnson Engineering and Maintenance, B-228184, Dec. 3, 1987, 87-2 CPD ¶ 544. East Coast has not made this showing; East Coast's allegations of bad faith are based purely on supposition and conjecture and are not supported by the record; any inaccuracies in the estimates were inadvertent rather than attributable to a specific intent to harm the protester.

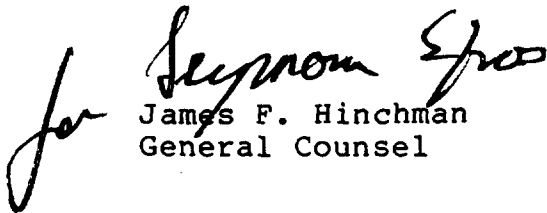
Responsiveness

East Coast maintains that DOD Contracts' bid was nonresponsive because its bid bond contained deficiencies, including the listing of corporate sureties not included in the Treasury Department's list of approved sureties, and the sureties' failure to list other surety obligations on Standard Form (SF) 28. These arguments are without merit. DOD Contracts' bid bond was properly signed by two individual sureties, not corporate sureties, and the sureties' possible failure to list all other surety obligations would not have rendered the bid nonresponsive. O.V. Campbell & Sons Industries, Inc., B-229555, Mar. 14, 1988, 88-1 CPD ¶ 259 (the SF 28 serves solely as an aid in determining the responsibility of an individual surety).

East Coast further argues that DOD Contracts' bid of \$50,000 for materials to be furnished in connection with body and paint work also rendered its bid nonresponsive. As the solicitation specified that these materials are to be purchased at the government's expense, East Coast asserts, DOD Contracts' quote of more than a nominal amount for these supplies added a profit margin clearly not contemplated by the solicitation's terms. This argument is also without merit. DOD Contracts agreed to supply the materials according to the solicitation's terms, and the bid therefore was responsive in this regard. Even with this amount included in its bid price, DOD Contracts was the low responsive bidder.

East Coast also challenges the responsiveness of the other three lower bidders, but since we find DOD Contracts' bid responsive, the acceptability of the other bids is irrelevant.

The protest is denied.


James F. Hinchman
General Counsel