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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Earthworks of Sumter, Inc.

File: B-234594

Date: May 30, 1989

DIGEST

1. Protest that solicitation for grounds maintenance services was misleading is denied where solicitation, as amended, clearly describes the required frequency of services.
2. The apparent low bid under a solicitation for grounds maintenance services is not materially unbalanced where there is no reasonable doubt that acceptance of bid will result in the lowest ultimate cost to the government.

DECISION

Earthworks of Sumter, Inc., protests the proposed award of a contract to Williams Services, Inc., under invitation for bids (IFB) No. F38601-89-B-0001, issued by the Air Force for grounds maintenance services at Shaw Air Force Base, South Carolina. Earthworks contends that bidders were misled by a solicitation provision and that Williams' bid should be rejected because it is materially unbalanced and below cost.

We deny the protest.

The agency reports that bids were previously solicited for this requirement under IFB No. F38601-88-B-0038, which was canceled due to flaws in the solicitation involving the bid schedule and evaluation criteria. Earthworks was the apparent low bidder under the canceled solicitation. As a result of the agency's cancellation, we dismissed as academic an earlier protest filed with our Office by Williams against any award to Earthworks under that IFB. On September 19, 1988, Earthworks filed a protest with our Office challenging the agency's cancellation of the IFB. Finding no reason to question the propriety of the cancellation, we denied that protest. Earthworks of Sumter, Inc., B-232067.2, Jan. 5, 1989, 89-1 CPD ¶ 9.

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In the meantime, on December 19, the Air Force resolicited the requirement under this IFB, which provided for the award of a fixed-price contract for a base period from March 6, 1989, through October 27, 1989, with four 1-year options. Bids were received from 11 firms at bid opening on February 6, 1989. Williams offered the lowest price for the base period and for each of the option years. The protester submitted the next low bid. Earthworks filed this protest with our Office on February 22.

Based on the range of prices received for contract line item number (CLIN) 0001AB (approximately \$10,000 to \$115,000), Earthworks contends that the bidders, excluding Williams, were misled by a flawed solicitation provision concerning the number of times per week the successful contractor would be required to cut the plots of grass identified in CLIN 0001AB. The protester alleges that under the previous solicitation, the grass listed in the base bid item (referred to as CLIN 0001AA under the present solicitation) and a bid additive item (now CLIN 0001AB) had to be cut twice weekly. Earthworks surmises that 10 out of the 11 bidders' prices for CLIN 0001AB include costs for grass cutting more than one time per week, whereas Williams' price apparently reflects grass cutting only once per week. Earthworks contends that the solicitation inadequately advised bidders of the requirement and was therefore misleading. We disagree.

Solicitations must be drafted to inform all bidders in clear and unambiguous terms of what is required of them so they can compete on an equal basis. See Newport News Shipbuilding and Dry Dock Co., B-221888, July 2, 1986, 86-2 CPD ¶ 23. The solicitation provision in question here, paragraph 5.1.1, as amended, states that "[a]reas included in item 0001AB shall be cut one time per week such that height of grass following the cut shall not exceed two and one-half (2-1/2) inches and shall not be less than one and one-half (1-1/2) inches." We find this provision unambiguous since it clearly and unequivocally describes the frequency of grass cutting services required. Further, we find nothing in the record which indicates that the bidders were actually misled by this provision or that any variation in bid prices among the bidders for the required services under CLIN 0001AB reflects anything other than each contractor's experience and exercise of business judgment in estimating its own particular project costs. We therefore deny this protest ground.

Earthworks next contends that Williams' bid should be rejected as nonresponsive since it is allegedly unbalanced. The protester specifically points out that Williams' bid,

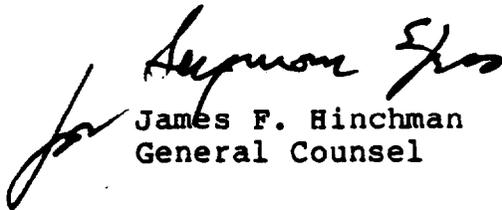
unlike Earthworks' bid, varies in price in the option years, as compared to the base period, and that Williams bid much lower than other bidders on some items and higher on others.

Here, even assuming that Williams' bid is unbalanced, there must also be a showing that it is materially unbalanced. A bid is materially unbalanced if there is a reasonable doubt that award to the bidder submitting the mathematically unbalanced bid will result in the lowest ultimate cost to the government. Consequently, a materially unbalanced bid may not be accepted. See Paccar Defense Systems, B-232530.2, Jan. 3, 1989, 89-1 CPD ¶ 1.

In this regard, since Williams' bid for the base period (\$178,647.06) is lower than Earthworks' (\$200,973.56), and since Williams bid lower in each successive option year, there is no doubt that award to Williams will result in the lowest ultimate cost to the government, whether or not the options are exercised. Thus, we do not think that Williams' bid is materially unbalanced. See The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425.

Finally, Earthworks alleges that Williams' price is unrealistically low and below cost. The protester alleges that Williams stated, during a previous protest, that the required services could not be provided for a price as low as that which Earthworks bid, which price is actually higher than Williams' bid under this IFB. However, the possibility that Williams may have submitted a below-cost bid provides no basis for protest. See DOD Contracts, Inc., B-227689.2, Dec. 15, 1987, 87-2 CPD ¶ 591. Rather, a prospective contractor's ability to perform the contract at the price it bid is a matter of responsibility for the agency to determine before contract award. Id.

The protest is denied.


James F. Hinchman
General Counsel