



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-Cities Tool, Inc.

File: B-238377

Date: April 18, 1990

Steve Gutow, Esq., Wendler, Blume & Gutow, for the protester.
Louise E. Hansen, Esq., Office of the General Counsel, Defense Logistics Agency, for the agency.
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that all or none solicitation provision was ambiguous is denied where protester's interpretation of provision as applying to quantities within line items, rather than to all line items themselves, is unreasonable given that provision refers to 100 percent of "all items to be awarded." Since protester submitted an all or none bid but was not the low aggregate bidder, protester was properly found not in line for award.
2. Protest that prospective awardee who specified \$4 million as the minimum amount for which it would accept award is ineligible for award because it was the low bidder on items totaling less than \$4 million is denied, since contracting officer properly may make multiple awards based on the combination of bids which result in the lowest overall cost to the government, taking into account any quantity limitations in the bids.
3. Protest concerning alleged defects on the face of an invitation for bids is untimely when filed after bid opening.

DECISION

Tri-Cities Tool, Inc. (TCT), protests the proposed awards to Doninger Metal Products Corporation and F&H Manufacturing Corporation under invitation for bids (IFB) No. DLA100-90-B-0006, issued by the Defense Logistics Agency (DLA) for

C48322/141184

tent frame components. TCT contends that it should receive award based on its low price for certain line items.

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

The IFB was issued on November 14, 1989, as a total small business set-aside for temper tent frame section components listed as seven individual line items with a specified quantity for each line item. The IFB included a provision which required bidders to indicate if there were any minimum or maximum quantity limitations on their bids by checking one of five blocks. At bid opening on January 4, 1990, DLA received seven bids, including those from TCT, Doninger and F&H. Concerning quantity limitations, Doninger indicated that it would accept an award of any combination of line items in excess of \$4 million; TCT checked the block indicating "100% of all items to be awarded or none"; and F&H did not include any limitation. In analyzing the bids DLA noted that while TCT submitted the lowest price for line items (1), (4), and (5), TCT also conditioned its bid on an award of all items to be awarded; TCT's aggregate bid price for the seven line items was \$8,810,339. DLA thus determined that an award to F&H for line item 1 and Doninger for line items 2-7 at a total price of \$8,751,179.25 resulted in the lowest cost to the government.

TCT first protests that it did not intend to condition its bid on an all or none quantity limitation pertaining to every component to be awarded under the contract. Rather, TCT argues that it interpreted the block it checked--which specified a quantity limitation of 100 percent of all items to be awarded or none--to refer to 100 percent of each individual line item. TCT states that, by checking the block, it meant only to indicate that it would not accept an award for any individual line item for less than the full quantity specified in the IFB for that item. TCT argues that its interpretation of the all or none qualification is reasonable and the solicitation is at best ambiguous. To support its interpretation TCT first asserts that the all or none provision in the solicitation refers to quantities, and throughout the IFB quantities are discussed as they relate to each line item. TCT further notes that there was no dotted line to permit a bidder to include an aggregate bid and that it in fact made no attempt to total its bid. Finally, citing Kings Point Indus., Inc., 67 Comp. Gen. 132 (1987), 87-2 CPD ¶ 587, TCT argues that since it informed DLA the day after bid opening that it intended the all or none qualification to be applied only to the individual line items, we should apply that interpretation to TCT's bid.

DLA contends that by checking the block "100% of all items to be awarded or none," TCT expressed its intention not to accept a contract award for less than every item to be awarded under the solicitation, and as a result would be in line to receive an award only if it submitted the low aggregate bid for all seven line items. DLA concludes that since the Doninger-F&H bid combination was lower than TCT's aggregate bid, it properly determined that TCT was not in line for award.

The mere allegation that a solicitation is ambiguous does not make it so; rather, a solicitation is ambiguous only where, when read as a whole, it is susceptible of more than one reasonable interpretation. Niedermeyer-Martin Co., B-226623, July 8, 1987, 87-2 CPD ¶ 23. Here, we do not agree with TCT that the qualification concerning quantity limitations, "100% of all items to be awarded or none," can reasonably be interpreted as establishing an all or none qualification limited to the quantities specified for each individual line item.

While, as TCT alleges, the qualification concerns minimum and maximum quantity limitations, the specific block which TCT checked refers to 100 percent of "all items to be awarded." In our view, this language can be reasonably interpreted only to refer to the seven line items to be awarded under the solicitation. Throughout the solicitation the term "item" is used to refer either to the particular type of equipment described under each line item, or to the line item itself. When the IFB discusses the number of prices of equipment to be provided under a line item, it uses the term "quantity." See e.g. clauses on p. 4 (§ 52.212-8001(b)), p. 24 (§ 52.212-9) or p. 27 (§ 52.212-10). Thus we understand the reference to "100% of all items" to refer to line items, not "100% of the quantities specified for each line item." In addition, the IFB provided a place for bidders to limit their bids with regard to line item quantities to be awarded. The last of the five blocks in the section concerning quantity limitations is labeled "other (including limitations applicable to separate items)," thus giving bidders a specific place to denote limitations concerning individual line items and also suggesting that the other four blocks refer to limitations concerning all the items to be awarded under the IFB.

Finally, contrary to TCT's position, our decision, Kings Point Indus., Inc., 67 Comp. Gen 132, supra, does not stand for the proposition that we will accept a bidder's post-bid opening explanation of an all or none qualification as dispositive of how the qualification should be interpreted. In Kings Point, the IFB allowed bidders to limit their bids

in two ways, by specifying either all or none of the line items, or all or none of the quantities within each line item. The protester's bid stated only "all or none to be awarded." In deciding how to interpret the bid, we held that since the protester initially made clear that the limitation in its bid referred to all or none of the quantities within each line item, it could not later change its position and argue that the limitation in fact referred to all the line items.

Here, in contrast, we are not attempting to interpret an all or none qualification in a bid where a solicitation specifically advises bidders that they may qualify by individual line item or by all line items and the bidder does not indicate which it intends. Rather, the provision at issue clearly refers to all line items, and while TCT may have interpreted it as referring to individual line items, we do not think its interpretation is reasonable.

Given our conclusion that the IFB provision in question concerned all line items in the IFB, DLA properly determined that TCT was not in line for award. In this regard, sealed bid contracts must be awarded on the basis of the lowest cost to the government. Thus, where a bid is submitted on an all or none basis, and the bid does not represent the lowest aggregate price available to the government, the bidder is not entitled to the award. Canova Moving and Storage Co., B-207168, Jan. 18, 1983, 83-1 CPD ¶ 59. Further, a bidder which submits a bid on an all or none basis does not have the option to decide after bid opening that it will accept an award for less than the total number of items bid. Pluribus Prods., Inc., 66 Comp. Gen. 86 (1986), 86-2 CPD ¶ 536. Since the combined award to F&H and Doninger was lower in price than TCT's total bid, TCT was not in line for award.

TCT also asserts that Doninger, which received an award for six of the seven line items at a total price of \$7,751,970, is ineligible for award. Specifically, TCT argues that Doninger qualified its bid with the statement, "we will accept any combination of line items awarded to us in excess of \$4,000,000," but was the low bidder only for line items totaling approximately \$3.3 million. Although TCT does not elaborate on this argument, it appears that in reaching this conclusion TCT totaled Doninger's bids for four of the six line items for which it received award, excluding from the calculation the remaining two line items on which TCT's prices were lowest. Since TCT bid on an all or none basis, however, the agency could not consider TCT for award of the two individual line items on which its prices were lowest. Accordingly, Doninger, the next low bidder for those two

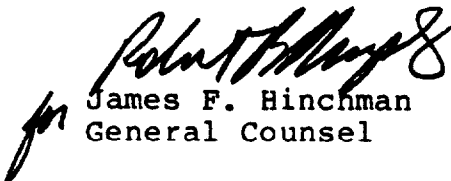
line items, and the low bidder for the other four line items, was eligible for award of all six line items. Since the six items totaled \$7,751,970, the \$4 million minimum listed in Doninger's bid was not an obstacle to award to Doninger.

TCT also raises a number of additional issues. First, TCT argues that the IFB is defective because it did not include (1) a table of contents; (2) part I, section G, Contract Administration Data; (3) part IV, section M, Evaluation Factors for Award; (4) certain drawings and specifications; (5) the required inspection in part I, section E, Inspection and Acceptance; and (6) a preference for small disadvantaged business concerns. TCT also complains that the solicitation referenced certain irrelevant drawings and that bidders were not provided with 30 days to submit their bids. These allegations all concern defects which were apparent on the fact of the IFB and thus were required to be raised before the January 4 bid opening. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989); Nationwide Roofing & Sheet Metal Co., B-234222.2, June 22, 1989, 89-1 CPD ¶ 588. Since TCT did not raise them until January 22, they are untimely and we will not consider them on the merits.

Finally, TCT complains that DLA would not consider a value engineering change proposal (VECP) submitted by the firm and would not provide TCT with the opportunity to present its performance plan. VECs, however, are only considered in connection with ongoing contracts. See Federal Acquisition Regulation § 48.001. Further, since the IFB did not require a plan for performance, DLA's failure to consider TCT's plan has no relevance to the evaluation of its bid or the award decision.

TCT also requests reimbursement of the costs it incurred in filing and pursuing this protest. Since we deny the protest, TCT is not entitled to recover these costs. Aceves Constr. and Maintenance, Inc., B-233027, Jan. 4, 1989, 89-1 CPD ¶ 7.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel