



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Seaward Corporation

File: B-237107.2

Date: June 13, 1990

Gilbert J. Ginsburg, Esq., Epstein, Becker, and Green, P.C.,
for the protester.

Craig E. Hodge, Esq., and David Scott, Esq., Office of the
Command Counsel, Department of the Army, for the agency.
Robert A. Spiegel, Esq., and Andrew T. Pogany, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Where a contract was to be awarded on an "all or none" basis and the low bidder offered to perform all of the work described in two line items for a single, lump-sum price, the low bid is responsive, and the agency could properly waive as a minor informality the bidder's failure to individually price each line item.
2. Information bearing on bidder responsibility may be provided any time prior to award.

DECISION

Seaward Corporation protests the award of a contract to Barnes Electric Company, Inc., under invitation for bids (IFB) No. DAAD05-89-B-1568, issued by the Department of the Army for conversion of an electrical distribution system and the construction of a new system at Aberdeen Proving Ground, Maryland. Seaward asserts that the Barnes' bid was nonresponsive and that Barnes was nonresponsible.

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

The solicitation was issued on August 21, 1989, with amendment No. 0001. The solicitation instructed bidders to state a total price as well as a price for each of two line items. In addition, amendment No. 0001 informed prospective bidders that the contract would be awarded on an "all or none" basis. Since the work site contained unexploded ordnance, the IFB also required bidders to identify the

048757 / 141597

explosive ordnance disposal (EOD) organization which they would use as a subcontractor.

By the bid opening date of September 20, 1989, the Army received five bids. Barnes was the low bidder, and Seaward was second low. Barnes had submitted a single, lump-sum bid without separately pricing the two line items. Barnes also had not identified its EOD subcontractor. Seaward protested to our Office on September 25, 1989, that the Barnes bid was nonresponsive because Barnes had not separately priced each of the two line items and had not identified its EOD subcontractor. Due to the expiration of funding at the end of the 1989 fiscal year, the award of this contract was postponed indefinitely. We therefore dismissed the protest as premature on October 3, 1989. Funding for this procurement became available in the 1990 fiscal year, and the contract was awarded to Barnes on March 2, 1990. Seaward renewed its protest on March 13.

Seaward's first allegation is founded on a provision of amendment No. 0001 which states that a bidder "must quote on both [line] items in Section B, page B-1 in the solicitation to be eligible for award" (the first line item is for the conversion of the existing electrical distribution system and the second line item is for the construction of the new electrical substation). Seaward again notes that Barnes failed to separately price each of the two line items.

The test for responsiveness is whether a bid qualifies as an unconditional offer that will bind the contractor upon acceptance to perform the exact thing solicited in accordance with all the terms of the invitation. Rocky Ridge Contractors, Inc., B-224862, Dec. 19, 1986, 86-2 CPD ¶ 691.

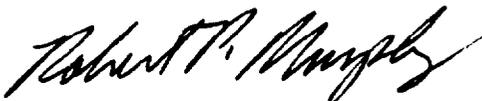
Here, although Barnes did not include individual prices for each of the two line items in its bid, Barnes did provide a single, lump-sum price to perform the work required by the solicitation "in strict accordance with [its] terms." Given that the IFB provided that the contract would be awarded on an "all or none" basis and that Barnes offered to perform all of the work described in both line items for a lump-sum price, the Army properly determined Barnes' bid to be responsive and properly waived as a minor informality the bidder's failure to price each line item. See Jones Floor Covering, Inc., B-237139, Jan. 5, 1990, 90-1 CPD ¶ 25.

Seaward's second allegation is founded on the IFB requirement that bidders provide the name, address and telephone number of their EOD subcontractor with their bid. While the Army acknowledges that Barnes did not supply the necessary information until after bid opening, the agency claims that this designation of a subcontractor concerns a matter of responsibility which can be satisfied until the time of award.

Here, we note that the IFB permitted bidders to change the designated EOD subcontractor until the time of award. We therefore agree with the Army that the subcontractor designation is one of responsibility, not responsiveness (that is, not an obligation fixed at bid opening), and information bearing on a bidder's responsibility may be provided any time prior to award. Noslot Cleaning Servs., Inc., B-228538, Jan. 21, 1988, 88-1 CPD ¶ 58. We note that Barnes provided the information prior to award. Accordingly, we deny this protest ground.

Seaward filed its comments in response to the agency report regarding this protest on April 24. In those comments, the protester alleges for the first time that Barnes may have engaged in unbalanced bidding and that the agency failed to incorporate pre-bid opening modifications to the IFB's wage determination and awarded the contract under a "stale wage determination." All of these allegations are based upon information that was available to Seaward at (or prior to) the time of its protest on March 13, and are therefore untimely filed. See Armstrong Motorcycles, Ltd., B-238436; B-238436.2, June 5, 1990, 90-1 CPD ¶ ____.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel