



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Laidlaw Environmental Services (FS), Inc.

File: B-246114

Date: October 31, 1991

Thomas G. Gallant, Esq., for the protester,
C. Douglas McArthur, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protester fails to state a valid basis of protest where despite its contentions that the awardee's low bid was nonresponsive, protester fails to identify anything on the face of the low bid that limited, reduced, or modified the obligation of the awardee to perform in accordance with the terms of the solicitation.

DECISION

Laidlaw Environmental Services (FS), Inc. protests the award of a contract under invitation for bids (IFB) No. N62474-91-B-9477, issued by the Department of the Navy. The protester contends that the agency should reject the two low bids as nonresponsive.

We dismiss the protest.

On September 30, 1991, the agency awarded a contract to Environmental Management Services, Inc. (EMS) as the low bidder under the IFB, for removal action at Tank S-505 on Treasure Island in San Francisco Bay. Laidlaw filed this protest on October 7.

The protester alleges that it was informed by the agency that the Navy had concerns over the awardee's extremely low prices for certain line items and had met with EMS to discuss the matter. The protester asserts that the awardee told the Navy that it did not intend to incinerate all PCB-contaminated pipe as required by one line item under the solicitation, but intended to incinerate only a portion of the pipe contents and "fuel blend" the remainder in a cement kiln fuels program. According to the protester, this allowed the awardee to bid a lower price.

The protester contends that it was illegal for the agency to investigate whether the low bid met specifications; the protester argues further that the awardee's expressed intention not to incinerate all contaminated pipe conflicts with the specifications and that the bid is therefore nonresponsive.

Even if the facts are precisely as the protester states them, there is no basis for finding the bid nonresponsive. The test for responsiveness is whether a bid as submitted represents an unequivocal offer to provide the requested supplies or services at a firm, fixed-price. Unless something on the face of the bid either limits, reduces or modifies the obligation of the prospective contractor to perform in accordance with the terms of the invitation, the bid is responsive; the determination as to whether a bid is responsive must be based solely on the bid documents themselves as they appear at the time of bid opening. Haz-Tad, Inc.; et al., 68 Comp. Gen. 92 (1988), 88-2 CPD ¶ 486.

The protester does not allege that anything on the face of the awardee's bid limited, reduced, or modified the awardee's obligation or that the awardee's bid represented anything other than an unqualified promise to perform in accordance with specification. To the extent the protester is arguing that EMS is not capable of performing in accordance with the specifications, a firm's capability to perform a contract is a responsibility matter. An agency's affirmative determination of responsibility which is a prerequisite to an award, will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5) (1991); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Neither exception is applicable here. Further, whether EMS actually complies with its obligations under the solicitation is a matter of contract administration, which is the primary responsibility of the contracting agency and not for consideration by our Office. 4 C.F.R. § 21.3(m)(1); Thompson Power, B-244894, July 31, 1991, 91-2 CPD ¶ 118. The protest therefore provides no basis for finding the low bid nonresponsive, and Laidlaw therefore fails to state a valid basis of protest.

The protester also contends that the low bid is unbalanced, in that the prices for certain line items are below the other bids and the government estimate, and are defectively priced. To the extent that the protester alleges the low bid is unbalanced, it fails to state a valid basis of protest, because the protester fails to allege, as it must in such instances, that the bid also includes

overstated prices. See Commercial Transfer Sys., Inc., B-240776, Aug. 21, 1990, 90-2 CPD ¶ 148. To the extent that the protester asserts that the low bidder's prices are unreasonably low or mistaken, the issue is not for review by our Office because it is solely the responsibility of the contracting parties--the government and the firm in line for award--to assert rights and bring forth all necessary evidence to resolve questions of mistake in a bid. See Kellogg Plant Servs., Inc., B-227689.3, Nov. 24, 1987, 87-2 CPD ¶ 510.

The protest is dismissed.¹


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Assistant General Counsel

¹The protester also argues that Decon Environmental Services, Inc., the second low bidder, qualified its bid in a cover letter to its bid. Decon has furnished our Office a copy of this letter. While the letter "recommend[s]" an alternate approach to the work, it expressly offers "to perform the work as described in the specifications for this project." We do not view this letter as taking exception to the specifications.