

Finley
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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Giberson Plumbing & Excavating, Inc.
File: B-245798
Date: December 27, 1991

R. Drew Boyer, for the protester.

John M. Kinsey, Esq., U.S. Coast Guard, for the agency.
Ann H. Finley, Esq., and Henry R. Wray, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Procuring agency properly waived bidder's failure to include price of one item in its bid where the work covered is divisible from the solicitation and the cost is de minimis relative to the total bid and would not affect the competitive standing of the bidders.

DECISION

Giberson Plumbing & Excavating, Inc. protests the award of a contract to Jenkins Mechanical Contractors under invitation for bids (IFB) No. DTCG83-91-B-3WF416, issued by the United States Coast Guard for new water service. Giberson asserts that Jenkins's bid should have been rejected as nonresponsive because Jenkins failed to submit a price for one item.

We deny the protest.

The IFB called for services to disconnect existing well water and construct and connect new water service from a public water supply system curb box to interior plumbing in single family dwelling units at a U.S. Coast Guard Station in New Jersey. The IFB required a basic bid for these services, and separate bids for two unit items as well as an additional option item. The protest concerns unit item 1.1, which called for a unit price per 50 square feet to repair sidewalks disturbed by new or recently constructed pipe trenches. There were no sidewalks or curbs at the job site.

The IFB specifically advised bidders that award would be based on the total aggregate amount for all items. It also specified that a price must be provided for each item and a bid would be considered nonresponsive.

Bid opening was held on August 15, 1991. Four bidders submitted bids. Jenkins submitted the apparent low bid and Giberson was next low bidder.

Instead of submitting a price for unit item 001, Jenkins inserted "N/A" (not applicable) and a notation "No curbs or sidewalks at site." Initially, the contracting officer considered Jenkins bid to be nonresponsive because it contained no price for item 001. However, after consulting with the legal staff, the contracting officer determined that the omission could be waived and that the bid was responsive.

Giberson protests that the Coast Guard improperly awarded Jenkins the contract because the failure to include a price for unit item 001 rendered its bid nonresponsive. The Coast Guard maintains that its waiver of the omission of the price for unit item 001 was proper since the work covered was divisible from the solicitation's overall requirements and the cost was de minimis and did not affect the competitive standing of the bidders.

Giberson asserts that the solicitation specifically required that a price be provided for each item and that Jenkins should have been disqualified and considered nonresponsive since it failed to do so. Giberson further contends that this is not a situation where the bidder simply forgot or overlooked a price, but rather that by entering "N/A" Jenkins indicated that it recognized the requirement to submit a price but decided to not include one, thus taking exception to the solicitation requirements. Giberson also disputes the Coast Guard's conclusion that unit item 001 is divisible from the overall solicitation.

To be responsive a bid must constitute an unequivocal offer to perform the exact thing called for in the solicitation, so that acceptance of the bid will bind the contractor in accordance with the material terms and conditions of the solicitation. SMC Information Systems, B-224466, Oct. 21, 1986, 86-2 CPD ¶ 505. Because the failure to include a price for an item evidences a bidder's intent not to be bound to perform the item, as a general rule a bid must be rejected as nonresponsive if the bid does not include a price for every item requested by the IFB. Spectrum Leasing Corp., B-216615, Feb. 19, 1985, 85-1 CPD ¶ 211. However, a contracting agency may waive the failure to bid on an item if the item for which the price is omitted is divisible from

the solicitation's overall requirements, as de minimis to the total cost, and would not affect the competitive standing of the bidders. Justice Environmental Service, Inc., E-014701, May 24, 1989, 89-1 CPD ¶ 411; H&W Builders, E-011141, Oct. 20, 1988, 88-2 CPD ¶ 379.

We conclude that the standards for waiver are met in this case. We find no requirement that the work described by unit item 001 be performed as part of the overall contract. Although the IFB did advise bidders that award was to be made on the total aggregate contract amount of all the items, it also made clear that only the basic bid would be awarded at the time of contract award. Unit items would only be awarded "if required." As noted previously, it appears that there was no work to be done under item 001.

Giberson contends that the contracting officer determined that all the items were required since the contracting officer's September 22, 1991, letter advising Giberson of the solicitation outcome said that the "award was made for the basic bid and unit items 001 and 002 and option item 001 in the amount of \$11,400.00." We do not regard this statement as a determination that all the items were required, but rather as a statement of the total cost of the contract if the basic bid and all the items were awarded.

Furthermore, we conclude that the cost to install sidewalks was de minimis in comparison to the costs of the overall contract requirements. The government's estimate for item 001 was \$440, which represents less than 5 percent of Jenkins's basic bid. None of the other bidders, including Giberson, bid more than \$500 on this item. Since Giberson's bid exceeded Jenkins's bid by over \$10,000, the addition of the unit item bid price to Jenkins's bid would not have affected their competitive standing.

It appears that the solicitation should not have included item 001 if, indeed, there was no possible requirement for item 001 work. However, item 001 represents less than 5 percent of the cost of the entire project. Furthermore, there is nothing to show that the protester or any other bidder was prejudiced by the inclusion of this item. Under these circumstances, we do not think the agency would be required to disturb the award. Kenny Grisham & Associates, E-014701, May 16, 1989, 89-1 CPD ¶ 465.

Therefore, the Coast Guard properly waived Jenkins's public
objection, and the protest is denied.

James F. Hinchman
James F. Hinchman
General Counsel