



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ryan-Murphy, Inc.

File: B-250851

Date: February 16, 1993

R. Nicholas Palmer, Esq., and Jeffrey A. Esses, Esq.,
Palmer & Paoli, for the protester.
John Pettit, Esq., Department of the Air Force, for the
agency.

Richard P. Burkard, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protest contending that bid was erroneously rejected as nonresponsive is denied where under a proper evaluation the protester was not the low bidder and thus would not be in line for award if its bid were found responsive.

DECISION

Ryan-Murphy, Inc. protests the rejection of its bid under invitation for bids (IFB) No. F19650-92-B-0034, issued by the Department of the Air Force for the removal and disposal of old underground storage tanks and the installation of new tanks. The protester argues that its bid was the lowest received and was improperly rejected as nonresponsive.

We deny the protest.

The IFB contemplated the award of a fixed-price, indefinite delivery, indefinite quantity type contract. The solicitation included two bid schedules. The first included line item Nos. 1 through 14, each of which set forth estimated quantities for various tasks such as removal of the old tanks, purchase and installation of the new tanks, etc., for the period beginning from the mailing date of the notice of award through 365 days thereafter. The second schedule included line item Nos. 15 through 28, which described the same work and set forth identical estimates for the period beginning at the conclusion of the first year and extending 365 days. The IFB designated these schedules as for the "first year period performance" and the "second year period performance." According to both parties, the estimates for each period represented the total amount of the agency's requirements. Accordingly, if the agency

placed orders for all of the estimated services in the first year, it would not expect to issue any orders for the second year. Nevertheless, unit and total prices for all line items for both performance periods were requested, and although the IFB was silent as to how the low bid would be determined, the agency evaluated the six bids received by totaling the bid amounts for all 28 line items.

A TEC Associates, Inc., determined to be the low bidder, submitted prices totaling \$1,301,598 for line item Nos. 1 through 14. A TEC's prices for line item Nos. 15 through 28 were identical. Ryan-Murphy's cumulative price for line item Nos. 1 through 14 was \$2,567,040. On the bid schedule for the "second year," line item Nos. 15 through 28, Ryan-Murphy did not include separate prices in the spaces set forth for the unit and total prices but instead set out the following language: "Same prices throughout 2nd year Items 15 to 28 = 01 to 14."

In addition to this language, Ryan-Murphy's bid under the first year schedule included various additions such as the firm's own breakdown of the estimated quantity set forth at line item No. 3, the designation of line item No. 9 and a portion of line item No. 14 as "alternates" and an "addendum to schedule" which set forth the protester's interpretation of the requirements of line item Nos. 9, 10 and 14. While the agency was unclear as how to calculate Ryan-Murphy's total price for both performance periods, the contracting officer rejected the bid as nonresponsive based on her finding that the protester had qualified its bid by the additions it made to its bid in the first year schedule. The agency awarded the contract to A TEC.

Ryan-Murphy states that it bid a total price of \$2,567,040 for all of the work, including that to be ordered during the second year and that this was clear from its bid. Further, the protester maintains that its bid under the first year schedule was not qualified. Accordingly, the firm asserts that it is entitled to award since its price is lower than A TEC's.

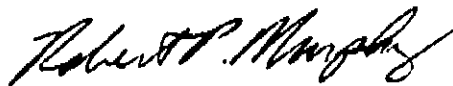
We do not agree that the protester's bid was low. Although the agency totaled all line items in determining the low bidder, that method obviously is inappropriate since line item Nos. 15 through 28 merely duplicated line item Nos. 1 through 14; all work will be performed and paid for under line item Nos. 1 through 14, or, for whatever work is ordered during the second contract year, under the corresponding items among line item Nos. 15 through 28. Thus, since evaluation of bids must be based on what the

actual likely cost to the government will be, see, e.g., Associated Healthcare Sys., Inc., 65 Comp. Gen. 823 (1986), 86-2 CPD ¶ 246; Tennessee Valley Serv. Co., B-188771, July 20, 1977, 77-2 CPD ¶ 40, aff'd, B-188771, Sept. 29, 1977, 77-2 CPD ¶ 241, under a proper evaluation the cost of each element of work may be taken into account only once. Since ATEC bid the same amount for each second year line item as it did for each corresponding first year line item, and the protester asserts that it did so also, it is clear that under an appropriate bid evaluation¹ the ATEC bid is lower than the protester's; that is, ATEC's bid should be evaluated as \$1,301,598, while the protester's bid, interpreted as the protester states it intended, should be evaluated as \$2,567,040. That being so, the protester is not in line for award of this contract.

The protester notes that the contract award document refers only to line item Nos. 1 through 14 and indicates an estimated contract amount of \$2,603,197, the price bid for both years. While the protester apparently suggests that the agency is therefore bound to pay this amount for the work, this simply is not the case since the work requirements are to be purchased by the issuance of delivery orders at the unit prices bid as the needs arise.

To the extent the protester argues that ATEC is not capable of performing at the unit prices in its bid, this argument concerns the firm's responsibility, a matter which we will not consider except in limited circumstances not present here.² Bid Protest Regulations, 4 C.F.R. § 21.3(m) (5) (1992).

The protest is denied.


for James F. Hinchman
General Counsel

¹If the agency intends to solicit for bids on a similar basis in the future, the solicitation should specify an appropriate bid evaluation methodology.

²In light of the other bids received, ATEC's price does not appear to be unreasonably low. As reasonably evaluated, the bidders' prices ranged from ATEC's bid of \$1,301,598 to the protester's bid of \$2,567,040, and the intervening prices increased gradually. For example, the second low bid was approximately \$1.6 million, followed by prices of approximately \$2 million and \$2.2 million.