



Comptroller General  
of the United States

Washington, D.C. 20548

92626

## Decision

**Matter of:** Southern Atlantic Services, Inc.

**File:** B-252419

**Date:** June 2, 1993

Rodney L. Boyd for the protester.  
Elizabeth DiVecchio Berrigan, Esq., Bobby G. Henry, Jr.,  
Esq., and J.H.M. Will, Esq., Department of the Army, for the  
agency.

Barbara C. Coles, Esq., and Christine S. Melody, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

1. Protest challenging rejection of bid for refuse disposal services as nonresponsive is denied where the bid price is ambiguous due to the bidder's submission of one bid schedule indicating a low bid and its submission of another bid schedule that failed to include both a bid price for one line item and a total bid price for all the line items.
2. Protest alleging that contracting officials were motivated by racial prejudice is dismissed where there is nothing in the record that suggests that the award decision was motivated by prejudice.
3. Protester lacks requisite interest to protest responsiveness of awardee's bid where protester's bid was properly found nonresponsive and there are other bidders that could be awarded the contract if the awardee were found ineligible.

### DECISION

Southern Atlantic Services, Inc. protests the award of a contract to Military Waste Management, Inc. under invitation for bids (IFB) No. DABT59-93-B-0002, issued by the Department of the Army for refuse disposal services. Southern contends that the Army improperly rejected its low bid as nonresponsive, and should have rejected Military Waste's second low bid as nonresponsive for failure to submit a quality control plan as required by the IFB.

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

The IFB contemplated the award of a firm, fixed-price contract for refuse disposal services for a 1-year period at Fort Lee, Virginia. The IFB included a 1-page schedule calling for unit and extended prices for three line items: solid waste pickup and disposal (postwide); solid waste pickup and disposal (family housing); and removal of veterinary refuse. The agency inserted prices for the two remaining line items, namely, the postwide landfill fee and the family housing landfill fee. The solicitation advised bidders that their bids would be rejected as nonresponsive if they failed to submit prices for all line items.

Four bids were opened at the January 20, 1993, bid opening. After reviewing Southern's bid, the contracting officer discovered that Southern submitted two separate schedules which, for the most part, contained different unit and extended prices. According to the Army, the schedules indicated a minimum of six possible bids and only one could be considered to be the low bid. As a result, the contracting officer rejected Southern's bid as nonresponsive based on her belief that the bid "failed to conform to the essential requirements of the solicitation." The contracting officer then made award to Military Waste for \$562,320.

Southern contends that it is entitled to award as the low responsive bidder despite the fact that it submitted two separate schedules which indicated different bids. Southern states that one of the schedules was its intended bid and the other schedule was used as its original worksheet.

The relevant parts of Southern's first schedule appeared as follows:

| <u>"ITEM</u>                  | <u>U/P</u>       | <u>AMOUNT</u>      |
|-------------------------------|------------------|--------------------|
| 0001AA                        | <u>24,252.00</u> | <u>291,000.24</u>  |
| 0001AB                        | <u>12,49.28</u>  | <u>149,928</u>     |
| 0001AC                        | <u>0.0</u>       | <u>0.0</u>         |
| 0001AD                        | <u>8,150.00</u>  | <u>97,800.00</u>   |
| 0001AE                        | <u>3,150.00</u>  | <u>37,800.00</u>   |
|                               |                  | Discount           |
|                               |                  | 76,552             |
| Total For Items 0001AA-0001AE |                  | <u>500,000.00"</u> |

Southern's second schedule appeared as follows:

| "ITEM  | U/P                  | AMOUNT                |
|--------|----------------------|-----------------------|
|        | 24,252.00            | 288,000.00            |
| 0001AA | <del>24,000.00</del> | <del>288,000.00</del> |
| 0001AB | <del>10,000.00</del> | <del>120,000.00</del> |
|        |                      | 90,000.00             |
| 0001AC | <del>7,500.00</del>  | <del>109,000.00</del> |
| 0001AD | 8,150.00             | 97,800.00             |
| 0001AE | 3,150.00             | 37,800.00             |

Total For Items 0001AA-0001AE \_\_\_\_\_"

The Army concedes that Southern is the low bidder under the first schedule.<sup>1</sup> However, the agency argues that Southern's bid was properly rejected because its price under the second schedule is at best ambiguous due to the fact that the firm failed to submit a price for one of the line items. We agree.

Bid responsiveness requires an unequivocal offer to provide without exception exactly what is required at a firm, fixed-price. Associated Mechanical, Inc., B-243892, Aug. 23, 1991, 91-2 CPD ¶ 192. A bid is nonresponsive and must be rejected if it is ambiguous as to price and is low only under one interpretation. Grove Roofing, Inc., B-233747, Feb. 23, 1989, 89-1 CPD ¶ 196.

In order for Southern's bid to be accepted, the bid prices on both separate schedules would have to be lower than the second low bidder's price (\$562,320) under all reasonable interpretations. See id. However, a review of Southern's second schedule demonstrates that Southern's bid price for that schedule is unclear and is subject to at least two interpretations. By crossing out its original bid price for line item 0001AB (covering solid waste pickup and disposal at family housing), and failing to insert any affirmative indication of its intended price--such as a zero, the words "no charge," or dashes--or a total bid price which established that its intended bid price for that line item was zero, Southern's bid created uncertainty as to its intended

<sup>1</sup>As the first schedule indicates, several of the decimal points are misplaced. The decimal points were preprinted on the bid schedule; the protester's bid prices were handwritten on the schedule. It appears that the misplacement of the decimal points is due simply to careless entry of the handwritten figures and that the total prices should be read without regard to the decimal points (i.e., \$291,024 for line item 0001AA and \$149,928 for line item 0001AB).

price and as to whether or not it was obligated to provide that item as a part of the other requirements for which prices were offered. See G.C. Ferguson 4-T Constr., B-247014, Apr. 22, 1992, 92-1 CPD ¶ 381.

A limited exception to this rule exists when a bidder does not specify a price for a line item, but the bid as submitted indicates the probability of error, the exact nature of the error and the intended bid price. Under this exception, bidders are permitted to insert an omitted bid price for similar items if the bidder has bid consistently on the same item elsewhere in the IFB. See Telex Co., Inc., Mil-Tex Sys., Inc., B-212385; B-212385.2, Jan. 30, 1984, 84-1 CPD ¶ 127. Assuming, for the sake of argument, that Southern's bid for line item 0001AB on the first schedule (\$149,928) signifies its intended bid price for the omitted price on the second schedule, Southern's bid would be \$663,528 and, thus, not low. Accordingly, the agency properly rejected its bid as nonresponsive.


In its comments on the agency report, the protester also alleges that the "contracting officer . . . has work[ed] very hard to make sure that only one company qualified for the contract." According to the protester, the contracting officer rejected its bid because it is a black-owned company and the other bidders are not minority-owned. To support its allegation, the protester states that the contracting officer has questioned him about his race and the award; for example, the protester alleges that without being questioned about the role of the company president's race and its effect on the procurement, the contracting officer stated that race did not affect the award decision and that "many bidders know that [she] is not a racist person."

Where a protester asserts that agency officials were improperly motivated by racial prejudice, the protester must submit evidence to support the allegations. See Bangor Contractors Corp., B-240071, Oct. 16, 1990, 90-2 CPD ¶ 295. There is nothing in the record here other than Southern's general assertion that the contracting officer was motivated by prejudice against its firm. Since the protester has provided no persuasive explanation or documentation supporting that assertion, we have no basis to believe that the award decision was motivated by prejudice. See Wallace & Wallace Inc.; Wallace & Wallace Fuel Oil, Inc., B-209859; B-209860, Dec. 2, 1982, 82-2 CPD ¶ 501.

Finally, the protester contends that the award to Military Waste was improper because the firm failed to submit a quality control plan as required by the IFB. Under the bid protest provisions of the Competition in Contracting Act of

1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a) (1993). A protester is not an interested party where it would not be in line for contract award were its protest sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7. Since Southern's bid was nonresponsive, and since the record shows there are at least two other bidders which could be awarded the contract if Military Waste were found ineligible for award, Southern lacks the direct economic interest necessary to be an "interested party" eligible to protest the award to Military Waste. FeinFocus, USA, Inc., B-245119, Dec. 3, 1991, 91-2 CPD ¶ 502. In any event, contrary to the protester's suggestion, failure to submit a quality control plan does not render a bid nonresponsive. All Clean, Inc., B-228608, Aug. 12, 1987, 87-2 CPD ¶ 154.

The protest is denied in part and dismissed in part.

  
for James F. Hinchman  
General Counsel