



Comptroller General
of the United States

1205216

Washington, D.C. 20548

Decision

Matter of: S.W. Monroe Construction Company
File: B-256382
Date: June 10, 1994

Joel S. Rubinstein, Esq., Bell, Boyd & Lloyd, for the protester.
Emily C. Hewitt, Esq., Gary F. Davis, Esq., Rebecca L. Kehoe, Esq., and Lydia R. Kupersmith, Esq., General Services Administration, for the agency.
Sylvia Schatz, Esq., David A. Ashen, Esq., and M. Penny Ahearn, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of invitation for bids after bid opening was proper where solicitation evaluation scheme would not ensure that award would be based on lowest cost to government.

DECISION

S.W. Monroe Construction Company protests the cancellation after bid opening of invitation for bids (IFB) No. GS-11P-94-ZRC-0014, issued by the General Services Administration (GSA) for the construction of a playground at the United States Coast Guard's Transpoint Building in Washington, D.C. GSA canceled the IFB based on its determination that the evaluation scheme was defective. Monroe maintains that the solicitation was not defective, cancellation was therefore improper, and it was entitled to award as the apparent low bidder.

We deny the protest.

The IFB, issued on December 1, 1993, contemplated the award of a firm-fixed-price contract and required the submission of a lump-sum base bid for construction of the playground. In addition, a note on a drawing attached to the IFB required bidders to submit a unit price for the excavation and disposal of any soil considered to be hazardous waste, and a note on another drawing referenced two alternate landscaping options--alternates A and B. However, the IFB provided no estimate for units of hazardous soil or line items for pricing of the options. The IFB provided that award was to be made to the "responsible bidder offering the lowest price for the base bid (consisting of the lump-sum

bid and any associated unit price bids extended by the applicable number of units shown on the bid form)."

At the December 29 bid opening, GSA received 11 bids. Only 2 of the 11 bids, including Monroe's, contained unit prices for the excavation and disposal of hazardous soil; only 1 bid, not Monroe's, contained prices for the alternate landscaping options. In reviewing the bids and the IFB, GSA concluded that the IFB evaluation scheme was defective and, on February 16, 1994, canceled the solicitation.

In reaching its conclusion that the evaluation scheme was defective, GSA discovered that it could not accurately determine the low bidder based on the IFB's failure to provide the (1) estimated number of units (cubic yards) of hazardous soil, and (2) line items for the alternate landscaping options. First, due to the lack of estimated units of hazardous soil, GSA could not extend the bidders' unit prices, as directed by the award clause, which prevented comparison of bids on a common basis. GSA determined that because each bidder was left to determine for itself the units of hazardous soil upon which to base its bid, the relative standing of bidders could change depending on the number of cubic yards and economies of scale used by each bidder. Second, due to the lack of line items for the alternate landscaping options, it was unclear to GSA whether bidders included the cost of the options in their lump-sum bids, which again prevented comparison of bids on a common basis. GSA was further concerned that a resulting contract would not bind a contractor to provide the landscaping work. Based on these areas of deficiency, GSA believed it could determine the low bid and satisfy its actual needs only by providing the estimated quantity of hazardous soil and line items for landscaping options in the IFB. The agency therefore determined that cancellation and resolicitation was in the best interest of the government.

Monroe argues that the IFB was in fact sufficient to determine the low bidder and to ensure that the agency's needs would be met. The protester contends that the lack of unit quantities for hazardous soil was not a fatal defect since the unit price would remain the same regardless of the quantity; in any event, because the unit price represents additional work which may or may not be encountered during performance, it need not even be evaluated. Further, the protester maintains that its own lump-sum base bid included the landscaping options, as it stated in a post-bid opening letter sent to GSA, which the protester believes was sufficient for evaluation purposes. Based on this analysis, the protester concludes that the agency had sufficient information upon which to evaluate the firm's bid as low. We disagree.

There must be a compelling reason to cancel after bid opening, because of the potential adverse impact of the cancellation on the competitive bidding system after exposure of prices. Federal Acquisition Regulation (FAR) § 14.404-1(a)(1); Bayfone of Tampa d/b/a Cellular One, B-242925, June 5, 1991, 91-1 CPD ¶ 535. Cancellation after bid opening is proper where an IFB does not contain the agency's best estimate of what will be required, or where an IFB's evaluation scheme does not set forth a common basis for evaluating offers, and thereby does not ensure that award will in fact be based on the lowest cost to the government. R.P. Densen Contractors, Inc., 66 Comp. Gen. 31 (1986), 86-2 CPD ¶ 401; Earthworks of Sumter, Inc., B-232067.2, Jan. 5, 1989, 89-1 CPD ¶ 9. Either of these flaws renders an IFB materially deficient. Id.

Here, the base bids alone ranged from the low of \$165,000, submitted by H&H Contractors, Inc., and the second low of \$169,700, submitted by Monroe, to the high of \$242,800. Of the two bidders submitting a unit price for hazardous soil, H&H submitted a bid of \$750 per cubic yard and Monroe submitted a bid of \$478.50 per cubic yard. Depending on the units of hazardous soil upon which bidders based their bids, the ranking of bidders could change. For example, for 1 cubic yard of soil, H&H's base bid plus unit price extension would be low at \$165,750 (\$165,000 + \$750) and Monroe's base bid plus extension would be second low at \$170,178.50 (\$169,700 + \$478.50). However, for 50 cubic yards the rankings would reverse: Monroe would be low at \$193,625 (\$169,700 + \$23,925) and H&H second low at \$202,500 (\$165,000 + \$37,500). This is exactly the reason why the estimated number of units of hazardous soil is crucial to determine the low bidder, i.e., so that bids can be evaluated on a common basis in order to ensure the lowest price to the government. See MTL Sys., Inc., B-245363, Dec. 20, 1991, 91-2 CPD ¶ 569. Despite the protester's argument to the contrary, the agency in fact expects that hazardous soil will have to be excavated; thus, estimates were necessary for evaluation purposes.

Similarly, without line items for alternate landscaping options in the IFB, it was impossible to determine from the face of a bid whether a bidder included the options in its base price, and thus determine the low bidder. On its face, Monroe's base bid gave no indication that the options were included. H&H's bid indicated that \$5,000 and \$1,500 for alternates A and B, respectively, were to be added to the firm's base bid. After bid opening, both bidders claimed that their base bids in fact included the landscaping options. However, such post-bid opening explanations as to what is included in a bid cannot be considered, since they would give bidders "two bites at the apple"; a bidder could

decide after viewing the bids whether or not to provide an explanation that would make its bid acceptable. See FAR § 14.301; RO Contracting Co., B-235496, Aug. 31, 1989, 89-2 CPD ¶ 200.

We conclude that, since the method for evaluating bids provided no assurance that award would result in the lowest cost to the government, the solicitation was clearly materially defective. Therefore cancellation of the solicitation was proper.

The protest is denied.

/s/ John M. Melody
for Robert P. Murphy
Acting General Counsel

¹Monroe argues that it has been prejudiced by the disclosure of its bid price. This does not render the cancellation improper; Monroe will have the same opportunity to compete on the resolicitation as other competitors under a revised IFB. See Earthworks of Sumter, Inc., supra.