



Decision

Matter of: American Independent Corporation

File: B-258126.2

Date: January 18, 1995

Thomas R. Botts for the protester.
Riggs L. Wilks, Jr., Esq., Department of the Army, for the agency.
Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An apparently mistaken bid was properly rejected where the bid was significantly lower than the government estimate and the bidder failed to provide the agency with a requested explanation that would support its asserted claim that the bid was correct as submitted.

DECISION

American Independent Corporation protests the rejection of its low bid under invitation for bids (IFB) No. DAKF40-94-B-0051, issued by the Department of the Army for school crossing attendants at Fort Bragg and Pope Air Force Base, North Carolina.

We deny the protest.

The IFB contemplated the award of a fixed-price contract for a base year with 2 option years. Bidders were informed that the agency would evaluate bids by adding the total price for all options to the total price for the basic requirement.

Because the agency had encountered underbidding problems with the three previous contractors for these services, a detailed government estimate was prepared based on the number of crossing points, hours required per crossing point, the applicable Department of Labor (DOL) wage determination, and the applicable fringe benefits. The government estimate for the 3-year total was \$351,609.86.

The agency received 17 bids, ranging from American Independent's total price of \$233,820 to \$583,011. Shortly

after bids were received, the Army requested that the six low bidders verify their bids.

Five of the six low bidders verified their bids; one bidder requested and was allowed to withdraw its bid based on a mistake. Although American Independent expressly verified its bid, the contracting officer suspected a mistake in the bid because it was substantially lower than the government estimate, which was based on wages mandated by the DOL wage determination. In addition, in its verification, American Independent stated: "Looking at last years' abstract this is about the same bid we made at that time." The contracting officer suspected that American Independent had failed to allow for increases in the number of crossing guards and duty hours over the previous year.

The agency again asked the five low bidders to verify their bids. In a letter to American Independent, the agency informed the protester of its suspicions, stating that the requirements of this solicitation were not the same as those solicited previously and that the agency believed "that you have grossly underbid this contract and may not even be able to make payroll." The agency specifically directed the protester's attention to three technical exhibits in the solicitation, listing the crossing points and times and the required hourly minimum wage and hourly health and welfare payment. The agency requested that the protester conduct "an intensive review of your bid" and asked for a response by a specified date.

In response to the second request, three of the five low bidders requested and were allowed to withdraw their bids because of mistakes in calculating the number of hours or benefits to be paid. Associated Services, the eventual awardee, again verified its bid.

Because no response was received from American Independent by the specified date, the contract specialist on several occasions telephoned the protester. According to the agency, in the phone conversations, the protester indicated that it had never received the second request for verification and that the firm thought the requirement was for the same number of hours and crosswalk attendants as the previous year. American Independent also asked the contract specialist to send the firm copies of the solicitation's technical exhibits, which explain the scope of work. In response, the agency telefaxed copies of the second verification request and the technical exhibits. The agency reports that in a subsequent telephone call, the protester confirmed that it received the second request for verification and the technical exhibits. According to the agency, in this call and subsequent calls, the contract specialist and the protester also discussed the health and

welfare benefits and the protester's intention to hire relatives to perform the contract.

When no written verification was received from American Independent, the contract specialist again placed numerous telephone calls to the protester and left several messages on the protester's answering machine. American Independent did not return the calls. While the protester asserts that in response to the second verification request it orally verified its bid in one of the telephone conversations and verified its bid in writing, the agency states that it received no second verification.

The contracting officer rejected American Independent's bid based on the assumption that it contained a mistake. The agency believed that American Independent did not understand the requirements of the solicitation and based its bid on the previous year's requirements. The agency also noted that American Independent had failed to verify its bid again after the contracting officer explained that the agency thought the bid was not sufficient to cover the labor costs mandated for the contract and requested that the firm review its bid in detail and verify it a second time. In its report, the agency alleges that American Independent's owner intends to hire his relatives and pay wages below the mandated minimum. The agency awarded the contract to Associated Services based on its bid of \$312,120.

American Independent protests that the agency unreasonably rejected its bid as containing a mistake, insists that it made no mistake and affirms its promise to perform the contract at the price it bid. The protester also alleges that its bid was rejected as a retaliatory act by the agency because American Independent had filed a previous protest.

Where it is clear that a mistake has been made, the bid cannot be accepted, even if the bidder verifies the bid, denies the existence of a mistake, or seeks to waive an admitted mistake, unless it is clear that the bid as submitted and intended would remain low. Trataros Constr., Inc., B-254600, Jan. 4, 1994, 94-1 CPD ¶ 1; Atlantic Servs., Inc., B-245763, Jan. 30, 1992, 92-1 CPD ¶ 125. Federal Acquisition Regulation (FAR) § 14.406-3(g)(1) provides that a contracting officer shall immediately request a bidder whose bid contains a suspected mistake in bid to verify the bid and that the "[a]ction taken to verify bids must be sufficient to reasonably assure the contracting officer that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder." FAR § 14.406-3(g)(5) then provides:

"Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged

mistake, the contracting officer shall consider the bid as submitted unless (i) the amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or (ii) there are other indications of error so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders."

A contracting officer's decision to reject an apparently mistaken bid under the authority of the above quoted FAR provision is subject to question only where it is unreasonable. Pamfilis Painting, Inc., B-237968, Apr. 3, 1990, 90-1 CPD ¶ 355; Gore's Sec. Agency, Inc., B-240969.2, Nov. 6, 1991, 91-2 CPD ¶ 430.

We conclude that the contracting officer's decision to reject American Independent's bid was reasonable under FAR § 14.406-3(g)(5). As noted above, the agency believed American Independent had made a mistake because its price was so out of line with the government estimate that the protester might not be able to make payroll, and because American Independent's representative had stated that he thought the requirements were the same as the previous year's. Under the circumstances, the agency reasonably requested substantiation from American Independent that its bid was without error. See Contract Servs. Co., Inc., 66 Comp. Gen. 468 (1987), 87-1 CPD ¶ 521.

Even though the protester was apprised of the agency's concerns, American Independent did not furnish evidence regarding the suspected mistake or how it had calculated its bid despite the agency's request for an intensive review. In fact, American Independent failed to verify its bid in any way.² American Independent provided no evidence, other than its initial verification, that it did not make a mistake on its bid, even when the importance of such information should have become apparent from the agency's

¹While American Independent alleges that it was never asked to submit evidence to support its price, the second verification request clearly required a response from the bidder explaining how it had calculated its bid and demonstrating that, although the bid was low, no mistake had been made.

²Although American Independent states that it sent a letter verifying its bid a second time, the agency received no such letter and the protester has not provided our Office a copy of the alleged letter.

numerous phone calls with the protester and upon receipt of the second detailed verification request. Indeed, the protester only furnished a brief explanation of the rationale of its bid in its comments on the agency report. Under these circumstances, the contracting officer reasonably concluded the bid was so out of line with the government estimate that acceptance would be unfair to other bidders. FAR § 14.406-3(g)(5).

American Independent's allegation that the agency rejected its bid in retaliation for the firm's previous protest is essentially an allegation of bad faith on the part of the contracting officer. To establish bad faith, our Office requires the presentation of convincing evidence that government officials had a specific and malicious intent to injure the protester. Sanstrans, Inc., B-245701, Jan. 27, 1992, 92-1 CPD ¶ 112. There is no such evidence here. On the contrary, the record shows that the bid was rejected because the agency believed it was mistaken and the protester failed to provide an explanation for the bid.

The protest is denied.

Robert P. Murphy
General Counsel